

36 Am. Jur. 2d Forgery Summary

American Jurisprudence, Second Edition | May 2021 Update

Forgery

Marie K. Pesando, J.D.

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Summary

Scope:

This article deals with the crimes of forgery, possession of a forged instrument, uttering a forged instrument, considering the essential elements of the offenses, and the various ways in which they may be committed. Also discussed are various types of instruments, including public records and documents, that may be the subject of forgery. Significant procedural matters relating to prosecutions for forgery are covered including matters relating to the necessary allegations of an indictment or information and to the joinder of the offenses of forging and uttering in the same indictment or information.

Federal Aspects:

The counterfeiting or forgery of a wide variety of documents and articles violates the Federal Criminal Code.

Treated Elsewhere:

Constructive trust, creation of after probate of forged will, see [Am. Jur. 2d, Trusts § 203](#)

Counterfeiting, see [Am. Jur. 2d, Counterfeiting §§ 1 et seq.](#)

Credit card, use of to commit forgery, see [Am. Jur. 2d, Credit Cards and Charge Accounts § 27](#)

Forgery of medical practitioner's license as ground for suspension or revocation thereof, see [Am. Jur. 2d, Physicians, Surgeons, and Other Healers § 73](#)

Forgery of money order, see [Am. Jur. 2d, Post Office § 95](#)

Forgery of mortgage, see [Am. Jur. 2d, Mortgages § 21](#)

Forgery of passport, see [Am. Jur. 2d, Aliens and Citizens § 2671](#); [Am. Jur. 2d, Passports § 61](#)

Forgery of patent, see [Am. Jur. 2d, Patents § 11](#)

Insurance against forgery, see [Am. Jur. 2d, Insurance § 512](#)

Invasion of privacy, forgery of consent as defense to, see [Am. Jur. 2d, Privacy § 231](#)

Quieting title, forged deed as cloud on title, see [Am. Jur. 2d, Quieting Title and Determination of Adverse Claims § 21](#)

Slander, charge of forgery as, see [Am. Jur. 2d, Libel and Slander § 175](#)

Subrogation of third person to depositor's claim against bank for paying forged instrument, see [Am. Jur. 2d, Subrogation § 37](#)

Swindling, see [Am. Jur. 2d, False Pretenses §§ 1 et seq.](#)

Validity and effect of forged banking instruments, see [Am. Jur. 2d, Banks and Financial Institutions §§ 901 to 909](#)

Validity and effect of forged bills and notes, see [Am. Jur. 2d, Bills and Notes §§ 375, 376, 539 to 546](#)

Validity and effect of forged instruments, generally, see [Am. Jur. 2d, Alteration of Instruments §§ 1 et seq.](#)

Validity and effect of forged letters of credit, see [Am. Jur. 2d, Letters of Credit §§ 1 et seq.](#)

Validity of forged surety's contract, see [Am. Jur. 2d, Suretyship § 101](#)

Research References:

Westlaw Databases

[American Law Reports \(ALR\)](#)

[West's A.L.R. Digest \(ALRDIGEST\)](#)

[American Jurisprudence 2d \(AMJUR\)](#)

[American Jurisprudence Proof of Facts \(AMJUR-POF\)](#)

[American Jurisprudence Pleading and Practice Forms Annotated \(AMJUR-PP\)](#)

[United States Code Annotated \(USCA\)](#)

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Research References

West's Key Number Digest


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Primary Authority

[18 U.S.C.A. §§ 470 to 514](#)

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Trial Strategy

[Liability for Sale of Forged Antique or Work of Art, 50 Am. Jur. Proof of Facts 3d 371](#)

36 Am. Jur. 2d Forgery § 1

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I. In General

§ 1. Definitions

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[Forgery: use of fictitious or assumed name, 49 A.L.R.2d 852](#)

"Forgery" is defined generally as the fraudulent making or alteration of a writing to the prejudice of another's rights,¹ or as the false making or material alteration, with intent to defraud, of any writing that, if genuine, might apparently be of legal efficacy or the foundation of a legal liability.² The gist of forgery is fraud.³ Forgery includes the alteration of or addition to any instrument with an intent to defraud.⁴

The legal definitions of forgery emphasize the "false making or material altering" of a writing as well as the fact that a writing is "falsely made, imitated, or forged."⁵ Forgery has also been defined as the false making or material alteration of, or addition to, a written instrument for the purpose of deceit and fraud, such that it purports to be the writing of another person.⁶ Forgery also consists of the false making or alteration of a document without authority or the uttering or making use of such a document with intent to defraud.⁷ Yet another definition emphasizes that the person making, altering, or completing the document must be someone other than its ostensible maker or drawer or that party's agent.⁸ However, the essence of forgery lies in the lack of genuineness in its execution, not in any false representation of authority,⁹ and the offense is committed even if the person ostensibly making the instrument is fictitious.¹⁰ Thus, it has also been stated that forgery is committed when a defendant, by fraud or trickery, causes another to execute a document where the signer is unaware, by reason of such trickery, that he or she is executing a document of that nature,¹¹ so that a forgery conviction can be based on a document with a genuine signature.¹² Additionally, the false instrument or alteration made with fraudulent intent must in fact be capable of effecting a fraud.¹³ As a matter of law, the crime of forgery is complete when the act and guilty knowledge coincide with the intent to defraud.¹⁴

Footnotes

- ¹ Kiekhoefer v. U.S. Nat. Bank of Los Angeles, 2 Cal. 2d 98, 39 P.2d 807, 96 A.L.R. 1244 (1934); State v. Widlak, 85 Conn. App. 84, 856 A.2d 446 (2004); In re Slaughter, 929 A.2d 433 (D.C. 2007); Hepburn v. Chapman, 109 Fla. 133, 149 So. 196 (1933); Hicks v. State, 176 Ga. 727, 168 S.E. 899, 87 A.L.R. 1166 (1933); People v. Reichert, 357 Ill. 205, 191 N.E. 220, 93 A.L.R. 862 (1934); State v. White, 207 Kan. 800, 486 P.2d 1381 (1971); State v. Fick, 204 Kan. 422, 464 P.2d 271 (1970); Peoples Bank & Trust Co. v. Fidelity & Cas. Co. of N. Y., 231 N.C. 510, 57 S.E.2d 809, 15 A.L.R.2d 996 (1950); State v. James, 688 S.W.2d 463 (Tenn. Crim. App. 1984); Blomquist v. Zions First Nat. Bank, N. A., 18 Utah 2d 65, 415 P.2d 213 (1966); Bullock v. Com., 205 Va. 558, 138 S.E.2d 261 (1964); State v. Phalen, 192 W. Va. 267, 452 S.E.2d 70 (1994).
- ² Hubsch v. U.S., 256 F.2d 820 (5th Cir. 1958); Quick Service Box Co. v. St. Paul Mercury Indem. Co. of St. Paul, 95 F.2d 15 (C.C.A. 7th Cir. 1938); Wright v. U.S., 172 F.2d 310 (9th Cir. 1949); State v. Kendrick, 173 N.W.2d 560 (Iowa 1970); Smith v. Com., 282 S.W.2d 618 (Ky. 1955); State v. Reese, 283 Md. 86, 388 A.2d 122 (1978); State v. Hudson, 793 S.W.2d 872 (Mo. Ct. App. E.D. 1990); Scott D. Erler, D.D.S. Profit Sharing Plan v. Creative Finance & Investments, L.L.C., 2009 MT 36, 349 Mont. 207, 203 P.3d 744 (2009); State v. Thrunk, 157 N.J. Super. 265, 384 A.2d 906 (App. Div. 1978); State v. Lee-Grigg, 374 S.C. 388, 649 S.E.2d 41 (Ct. App. 2007), cert. granted, (Sept. 18, 2008) and decision aff'd, 387 S.C. 310, 692 S.E.2d 895 (2010); Brown v. Com., 56 Va. App. 178, 692 S.E.2d 271 (2010); Hamburg v. State, 820 P.2d 523 (Wyo. 1991).
As used in the forgery statute, the word “makes” has no statutory definition; therefore, it is given its common sense dictionary meaning, which includes to execute or sign. State v. Goodin, 248 S.W.3d 127 (Mo. Ct. App. S.D. 2008), reh’g and/or transfer denied, (Mar. 6, 2008) and transfer denied, (Apr. 15, 2008).
- ³ Fortis Benefits Ins. Co. v. Pinkley, 926 So. 2d 981 (Ala. 2005); Peoples Bank & Trust Co. v. Fidelity & Cas. Co. of N. Y., 231 N.C. 510, 57 S.E.2d 809, 15 A.L.R.2d 996 (1950); Cooper v. Floyd, 9 N.C. App. 645, 177 S.E.2d 442 (1970).
- ⁴ §§ 19 et seq.
- ⁵ State Bank of Poplar Bluff v. Maryland Cas. Co., 289 F.2d 544 (8th Cir. 1961); State v. Gruver, 260 Iowa 131, 148 N.W.2d 405 (1967); Moore v. Com., 207 Va. 838, 153 S.E.2d 231 (1967).
- ⁶ U.S. v. Hunt, 456 F.3d 1255 (10th Cir. 2006); Rapp v. State, 274 So. 2d 18 (Fla. Dist. Ct. App. 4th Dist. 1973), writ discharged, 281 So. 2d 193 (Fla. 1973); State v. Berko, 75 N.J. Super. 283, 183 A.2d 118 (App. Div. 1962); People v. Wesley, 238 A.D.2d 939, 661 N.Y.S.2d 148 (4th Dep’t 1997).
Essence of forgery is that the writing must purport to be the writing of another than the person making it. Jackson v. State, 277 Ga. App. 801, 627 S.E.2d 853 (2006); State v. Jensen, 2004 UT App 467, 105 P.3d 951 (Utah Ct. App. 2004).
- ⁷ People v. Wheeler, 127 Cal. App. 4th 873, 26 Cal. Rptr. 3d 138 (3d Dist. 2005); State v. Rotibi, 117 N.M. 108, 869 P.2d 296 (Ct. App. 1994).
- ⁸ People v. Levitan, 49 N.Y.2d 87, 424 N.Y.S.2d 179, 399 N.E.2d 1199 (1980).
Evidence that defendant submitted application for license to practice medicine that contained false statements was insufficient to support second-degree forgery conviction, as the false assertions did not misrepresent the identity of the person who prepared the document.
Gottlieb v. State, 175 P.3d 664 (Alaska Ct. App. 2008).
- ⁹ U.S. v. Wilson, 441 F.2d 655 (2d Cir. 1971).
- ¹⁰ McClendon v. State, 290 So. 2d 77 (Fla. Dist. Ct. App. 2d Dist. 1974); State v. Spence, 131 Or. App. 392, 885 P.2d 744 (1994).
- ¹¹ People v. Martinez, 161 Cal. App. 4th 754, 74 Cal. Rptr. 3d 409 (4th Dist. 2008).
- ¹² People v. Martinez, 161 Cal. App. 4th 754, 74 Cal. Rptr. 3d 409 (4th Dist. 2008).
- ¹³ Com. v. Fisher, 452 Pa. Super. 564, 682 A.2d 811 (1996); Dixon v. Williams, 584 P.2d 1078 (Wyo. 1978).
- ¹⁴ People v. Cunefare, 102 P.3d 302 (Colo. 2004), as modified on denial of reh’g, (Dec. 20, 2004).

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36 Am. Jur. 2d Forgery § 2

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I. In General

§ 2. Statutory definitions; purpose of statutes

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West's Key Number Digest

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[What constitutes forgery of signature of federal judge or of other officer of federal court, so as to violate 18 U.S.C.A. sec. 505, 71 A.L.R. Fed. 928](#)

[Construction and application of 18 U.S.C.A. sec. 499 making it criminal offense to falsely make, forge, counterfeit, alter, tamper with, or misuse naval, military, or official passes or permits, 24 A.L.R. Fed. 189](#)

[What constitutes a "falsely made, forged, altered, or counterfeited" security within meaning of 18 USC sec. 2314, making transportation of such securities a criminal offense, 4 A.L.R. Fed. 793](#)

The offense of forgery is defined by state and federal statutes that, for the most part, do not repeal the common law but merely codify existing case law, extend the offense to include crimes not within the scope of the common-law definition, or increase the severity of the punishment that may be inflicted upon a conviction for forgery.¹ At least one state has recognized that the forms of forgery set forth in the statute are not exclusive.²

The purpose of forgery statutes is to protect society against the fabrication, falsification, and the uttering of instruments that might be acted upon as being genuine.³ Forgery is a crime because of the need to protect signatures and make negotiable instruments commercially feasible.⁴

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Footnotes

¹ [Mayes v. State, 264 Ark. 283, 571 S.W.2d 420 \(1978\); People v. Searcy, 199 Cal. App. 2d 740, 18 Cal. Rptr. 779, 90 A.L.R.2d 814 \(1st Dist. 1962\); Green v. State, 76 So. 2d 645, 49 A.L.R.2d 847 \(Fla. 1954\); People v. Kelley, 129 Ill.](#)

§ 2. Statutory definitions; purpose of statutes, 36 Am. Jur. 2d Forgery § 2

App. 3d 920, 85 Ill. Dec. 204, 473 N.E.2d 572 (3d Dist. 1985); *State v. Hogshooter*, 640 S.W.2d 202 (Mo. Ct. App. S.D. 1982).

² *People v. Kagan*, 264 Cal. App. 2d 648, 70 Cal. Rptr. 732 (1st Dist. 1968).

³ *DeShazer v. State*, 94 Ark. App. 363, 230 S.W.3d 285 (2006); *Brown v. Com.*, 56 Va. App. 178, 692 S.E.2d 271 (2010).

⁴ *People v. Cunningham*, 2 N.Y.3d 593, 780 N.Y.S.2d 750, 813 N.E.2d 891 (2004).

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§ 3. Federal provisions

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The Federal Criminal Code makes counterfeiting and forgery, as therein defined, and certain related activities, federal offenses.¹ These federal statutes do not, however, preempt the use of state law to convict a defendant for forging federal income tax documents.² Similarly, the Federal Copyright Act does not preempt a state law prohibiting the possession of a forged instrument where the writing in question is a label and the state law prohibits false labeling regardless of whether the labels are copyrightable.³

Under federal statute, whoever makes, utters, or possesses a counterfeited security of a state or a political subdivision thereof or of an organization, or whoever makes, utters, or possesses a forged security of a state or political subdivision thereof or of an organization, with intent to deceive another person, organization, or government is guilty of a crime.⁴ For purposes of the statute, the term “forged” means a document that purports to be genuine but is not because it has been falsely altered, completed, signed, or endorsed, or contains a false addition thereto or insertion therein, or is a combination of parts of two or more genuine documents.⁵ Forged checks are a security of a bank upon which they purport to be drawn even when there is no actual account matching the check.⁶

To support a conviction for uttering or possessing a counterfeit or forged security of an “organization,” it is incumbent on the federal government to prove that the disputed checks were of a legal entity that affected interstate commerce.⁷ A church not having operations in or activities affecting interstate commerce is not an “organization” so as to subject a forger of its securities to federal prosecution under the statute.⁸ Fictitious entities are also not considered “organizations” under the statute.⁹

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Footnotes

¹ 18 U.S.C.A. §§ 470 to 514.
As to federal counterfeiting offenses, generally, see [Am. Jur. 2d, Counterfeiting § 4](#).

² [State v. Radzvilowicz](#), 47 Conn. App. 1, 703 A.2d 767 (1997).

§ 3. Federal provisions, 36 Am. Jur. 2d Forgery § 3

³ People v. Borriello, 155 Misc. 2d 261, 588 N.Y.S.2d 991 (Sup 1992).

⁴ 18 U.S.C.A. § 513(a).

⁵ 18 U.S.C.A. § 513(c)(2).

⁶ U.S. v. Robinson, 318 Fed. Appx. 280 (5th Cir. 2009).

⁷ U.S. v. Lee, 439 F.3d 381 (7th Cir. 2006).

⁸ U.S. v. Reasor, 418 F.3d 466 (5th Cir. 2005).

⁹ U.S. v. Lee, 439 F.3d 381 (7th Cir. 2006).

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§ 4. Degrees

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Trial Strategy

[Liability for Sale of Forged Antique or Work of Art, 50 Am. Jur. Proof of Facts 3d 371](#)

Some forgery statutes divide forgery into degrees and provide different punishments in proportion to the seriousness of the act by which the crime is committed.¹ The elements of the crime are the same for all grades of forgery, and the type of instrument involved determines the grade of a forgery charge.² This disparity in penalties does not violate due process,³ and the classification of forgery offenses based on the type of instrument forged is not unconstitutional.⁴

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Footnotes

¹ [Eagle v. State, 92 Ark. App. 328, 213 S.W.3d 661 \(2005\)](#); [People v. Rubanowitz, 688 P.2d 231 \(Colo. 1984\)](#); [State v. Brown, 235 Conn. 502, 668 A.2d 1288 \(1995\)](#); [Dickerson v. State, 273 Ga. App. 499, 615 S.E.2d 584 \(2005\)](#); [Caudill v. Com., 723 S.W.2d 881 \(Ky. Ct. App. 1986\)](#); [State v. Ward, 1 Neb. App. 558, 510 N.W.2d 320 \(1993\)](#); [State v. Reed, 183 N.J. Super. 184, 443 A.2d 744 \(App. Div. 1982\)](#); [People v. Rodriguez, 71 A.D.3d 450, 897 N.Y.S.2d 42 \(1st Dep't 2010\)](#), leave to appeal granted, [15 N.Y.3d 777, 933 N.E.2d 1059 \(2010\)](#); [State v. Blake, 348 Or. 95, 228 P.3d 560 \(2010\)](#); [Com. v. Hughes, 2009 PA Super 240, 986 A.2d 159 \(2009\)](#); [Allen v. State, 544 S.W.2d 405 \(Tex. Crim. App. 1976\)](#).

² [Com. v. Pantalion, 2008 PA Super 226, 957 A.2d 1267 \(2008\)](#).

³ [Ex parte Smith, 849 S.W.2d 832 \(Tex. App. Amarillo 1992\)](#).

⁴ Tedder v. Cox, 317 F. Supp. 33 (W.D. Va. 1970); Hemphill v. State, 673 P.2d 888 (Alaska Ct. App. 1983); People v. Peace, 48 Mich. App. 79, 210 N.W.2d 116 (1973) (holding that the statutory scheme does not violate equal protection).

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§ 5. Essential elements

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The essential elements of the offense of forgery are:¹

- a false writing or alteration of an instrument
- the instrument's capability to defraud
- an intent to defraud

Certain statutes have been interpreted as not requiring proof of an intent to defraud.² However, this interpretation does not apply to forgery in general, since the essence of the offense is the intent to injure or defraud,³ and proof of a specific intent to defraud, such as through a showing that the person passing the instrument knew that it was forged, is essential to a conviction of the offense.⁴

In one jurisdiction, it has been determined that the statute providing that forgery can occur by use of “a writing or other thing” is broad enough to cover any inauthentic item provided that the statute's other elements are also met.⁵

CUMULATIVE SUPPLEMENT

Cases:

Criminal possession of a forged instrument in the second degree requires both knowing possession and intent, but the underlying statute does not require use or attempted use as an element of the crime, nor does the statute require that the contemplated use be imminent. [McKinney's Penal Law § 170.25](#). [People v. Rodriguez](#), 17 N.Y.3d 486, 933 N.Y.S.2d 631, 957 N.E.2d 1133 (2011).

[END OF SUPPLEMENT]

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Footnotes

- ¹ Vizcarra-Ayala v. Mukasey, 514 F.3d 870 (9th Cir. 2008); Hall v. State, 31 Ala. App. 455, 18 So. 2d 572 (1944); State v. Martin, 2 Ariz. App. 510, 410 P.2d 132 (1966); People v. Gaul-Alexander, 32 Cal. App. 4th 735, 38 Cal. Rptr. 2d 176 (5th Dist. 1995); State v. Etienne, 103 Conn. App. 544, 930 A.2d 726 (2007); In re Slaughter, 929 A.2d 433 (D.C. 2007); Rushing v. State, 684 So. 2d 856 (Fla. Dist. Ct. App. 5th Dist. 1996); Grier v. State, 64 Ga. App. 718, 13 S.E.2d 909 (1941); Gambino v. Boulevard Mortg. Corp., 398 Ill. App. 3d 21, 337 Ill. Dec. 257, 922 N.E.2d 380 (1st Dist. 2009), appeal denied, 236 Ill. 2d 553, 342 Ill. Dec. 568, 932 N.E.2d 1029 (2010); State v. Calhoun, 559 N.W.2d 4 (Iowa 1997); State v. Ramsey, 242 La. 1089, 141 So. 2d 375 (1962); State v. Fluitt, 482 So. 2d 906 (La. Ct. App. 2d Cir. 1986); Rowland v. State, 531 So. 2d 627 (Miss. 1988); State v. Smothers, 297 S.W.3d 626 (Mo. Ct. App. W.D. 2009); State v. Walker, 205 Neb. 42, 285 N.W.2d 839 (1979); State v. Wasson, 125 N.M. 656, 1998-NMCA-087, 964 P.2d 820 (Ct. App. 1998); State v. King, 178 N.C. App. 122, 630 S.E.2d 719 (2006); Com. v. Dietterick, 429 Pa. Super. 180, 631 A.2d 1347 (1993); State v. Kelly, 183 W. Va. 509, 396 S.E.2d 471 (1990).
- ² U.S. v. Reich, 479 F.3d 179 (2d Cir. 2007); U.S. v. Cowan, 116 F.3d 1360 (10th Cir. 1997) (both referring to crime of forging the signature of a federal judge).
- ³ King v. State, 519 S.W.2d 651 (Tex. Crim. App. 1975).
- ⁴ U.S. v. White, 611 F.2d 531, 5 Fed. R. Evid. Serv. 896 (5th Cir. 1980); McClain v. State, 473 So. 2d 612 (Ala. Crim. App. 1985); State v. McMurry, 184 Ariz. 447, 909 P.2d 1084 (Ct. App. Div. 1 1995); State v. Yurch, 37 Conn. App. 72, 654 A.2d 1246 (1995); State v. Escobedo, 404 So. 2d 760 (Fla. Dist. Ct. App. 3d Dist. 1981); State v. Franklin, 956 So. 2d 823 (La. Ct. App. 2d Cir. 2007), amended on reh'g, (June 14, 2007) and writ denied, 972 So. 2d 1162 (La. 2008); People v. Worden, 91 Mich. App. 666, 284 N.W.2d 159 (1979); State v. Pride, 1 S.W.3d 494 (Mo. Ct. App. W.D. 1999); State v. Morales, 129 N.M. 141, 2000-NMCA-046, 2 P.3d 878 (Ct. App. 2000); Diggs v. State, 928 S.W.2d 756 (Tex. App. Houston 14th Dist. 1996), petition for discretionary review granted, (Apr. 23, 1997) and review dismissed with per curiam opinion, 963 S.W.2d 78 (Tex. Crim. App. 1998); State v. Kelly, 183 W. Va. 509, 396 S.E.2d 471 (1990); Thomas v. State, 667 P.2d 658 (Wyo. 1983).
- ⁵ State v. Smothers, 297 S.W.3d 626 (Mo. Ct. App. W.D. 2009).

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II. Elements of Offenses

A. In General

§ 6. Matters that are not essential elements

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West's Key Number Digest

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The identity of the victim or victims or proof that the offender intended to defraud a particular person usually is not an essential element of the offense of forgery¹ nor is the actual deception of any individual or proof that anyone actually relied on the forged instrument.² Additionally, proof that a forged document was stolen is not an element of the offense.³ While a defendant's knowledge of the falsity of the instrument may be relevant to show intent to defraud, it is not an essential element of forgery.⁴ Because knowledge of the falsity of the instrument is not an essential element of forgery, it follows that actual falsity is not an essential element.⁵ Monetary gain or other misappropriation by the forger, or actual prejudice or injury to any individual, similarly need not be proven.⁶

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Footnotes

¹ State v. Thompson, 194 Ariz. 295, 981 P.2d 595, 108 A.L.R.5th 859 (Ct. App. Div. 1 1999); State v. Franklin, 956 So. 2d 823 (La. Ct. App. 2d Cir. 2007), amended on reh'g, (June 14, 2007) and writ denied, 972 So. 2d 1162 (La. 2008); Attorney Grievance Com'n of Maryland v. James, 333 Md. 174, 634 A.2d 48 (1993); State v. Johnson, 855 S.W.2d 470 (Mo. Ct. App. W.D. 1993); State v. DeMatteo, 134 N.H. 296, 591 A.2d 1323 (1991); State v. Wasson, 125 N.M. 656, 1998-NMCA-087, 964 P.2d 820 (Ct. App. 1998); State v. Markarian, 551 A.2d 1178 (R.I. 1988); State v. Winward, 909 P.2d 909 (Utah Ct. App. 1995); Thomas v. State, 667 P.2d 658 (Wyo. 1983).

² State v. Williams, 134 Ariz. 411, 656 P.2d 1272, 35 U.C.C. Rep. Serv. 920 (Ct. App. Div. 1 1982); People v. Cunefare, 102 P.3d 302 (Colo. 2004), as modified on denial of reh'g, (Dec. 20, 2004); People v. Passantino, 67 Ill. App. 3d 469, 24 Ill. Dec. 374, 385 N.E.2d 141 (2d Dist. 1979); State v. Hudson, 793 S.W.2d 872 (Mo. Ct. App. E.D. 1990); State v. Torres, 129 N.M. 51, 2000-NMCA-038, 1 P.3d 433 (Ct. App. 2000); People v. McFarlane, 63 A.D.3d 634, 882 N.Y.S.2d 96 (1st Dep't 2009), leave to appeal denied, 13 N.Y.3d 837, 890 N.Y.S.2d 453, 918 N.E.2d 968 (2009); State v. Williams, 2005-Ohio-1866, 2005 WL 926992 (Ohio Ct. App. 8th Dist. Cuyahoga County 2005); State v. Lee-Grigg, 374 S.C. 388, 649 S.E.2d 41 (Ct. App. 2007), cert. granted, (Sept. 18, 2008) and decision aff'd, 387 S.C. 310, 692 S.E.2d 895 (2010); State v. Davis, 105 Wis. 2d 690, 314 N.W.2d 907 (Ct. App. 1981).

³ State v. Mason, 79 Haw. 175, 900 P.2d 172 (Ct. App. 1995).

⁴ Benefield v. State, 904 N.E.2d 239 (Ind. Ct. App. 2009), transfer denied, 915 N.E.2d 992 (Ind. 2009).

⁵ Benefield v. State, 904 N.E.2d 239 (Ind. Ct. App. 2009), transfer denied, 915 N.E.2d 992 (Ind. 2009).

⁶ Johnson v. State, 412 So. 2d 822 (Ala. Crim. App. 1981); State v. Thompson, 194 Ariz. 295, 981 P.2d 595, 108 A.L.R.5th 859 (Ct. App. Div. 1 1999); People v. Murray, 262 Ill. App. 3d 1056, 203 Ill. Dec. 644, 640 N.E.2d 303 (1st Dist. 1994); Williams v. State, 541 N.E.2d 921 (Ind. 1989); State v. Calhoun, 559 N.W.2d 4 (Iowa 1997); State v. Machon, 410 So. 2d 1065 (La. 1982); State v. Weigel, 194 N.J. Super. 451, 477 A.2d 372 (App. Div. 1984); State v. Wasson, 125 N.M. 656, 1998-NMCA-087, 964 P.2d 820 (Ct. App. 1998); Com. v. Rosenzweig, 514 Pa. 111, 522 A.2d 1088, 3 U.C.C. Rep. Serv. 2d 465 (1987); State v. James, 688 S.W.2d 463 (Tenn. Crim. App. 1984); Holder v. State, 2006 WL 540335 (Tex. App. Dallas 2006); Campbell v. Com., 246 Va. 174, 431 S.E.2d 648 (1993); State v. Esquivel, 71 Wash. App. 868, 863 P.2d 113 (Div. 3 1993); State v. Phalen, 192 W. Va. 267, 452 S.E.2d 70 (1994).

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Forgery

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II. Elements of Offenses

A. In General

§ 7. Procurement; aiding and abetting

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#) 4

A.L.R. Library

[Procuring signature by fraud as forgery](#), 11 A.L.R.3d 1074

Trial Strategy

[Liability for Sale of Forged Antique or Work of Art](#), 50 Am. Jur. Proof of Facts 3d 371

To constitute forgery, the accused need not have signed the instrument in person. Rather, it is sufficient that he or she caused it to be signed by another¹ even though the latter is entirely innocent of criminal knowledge or intent.² Thus, a person is guilty of forgery if he or she procures its commission or is present and aids and abets another in procuring it.³ However, one cannot be convicted of aiding and abetting a forgery where there is no proof of the forgery.⁴

Because the principal who utters a forged instrument also necessarily possesses it, a person who aids and abets the principal in the crime of forgery by definition also aids and abets the principal in the crime of criminal possession of a forged instrument; an accomplice who is liable for forgery is also liable for criminal possession of a forged instrument.⁵

Footnotes

¹ State v. Phares, 120 Kan. 172, 243 P. 266 (1926); Com. v. Zaleski, 3 Mass. App. Ct. 538, 336 N.E.2d 877 (1975).

² Com. v. Zaleski, 3 Mass. App. Ct. 538, 336 N.E.2d 877 (1975).

³ Boyer v. State, 68 Okla. Crim. 220, 97 P.2d 779 (1939).

⁴ Goucher v. State, 113 Neb. 352, 204 N.W. 967, 41 A.L.R. 227 (1925).

⁵ State v. Blake, 348 Or. 95, 228 P.3d 560 (2010).
As to criminal possession of a forged instrument, generally, see § 9.

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II. Elements of Offenses

A. In General

§ 8. Mode of writing

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  9

Generally, the mode of writing, that is, whether the false instrument or signature was produced by handwriting or by stamping, engraving, or other means, is immaterial.¹ Thus, a forgery may be committed through the use of a typewriter by which both the body of the instrument and the purported signature are written² or through the use of a computer.³ It is immaterial that the handwriting on the forged instrument is not similar to the handwriting of the person whose instrument the forgery purports to be.⁴

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Footnotes

- ¹ U.S. v. London, 714 F.2d 1558, 71 A.L.R. Fed. 914 (11th Cir. 1983) (photocopying); People v. Burkett, 271 Cal. App. 2d 130, 74 Cal. Rptr. 692 (2d Dist. 1969) (photocopying); State v. Escobedo, 404 So. 2d 760 (Fla. Dist. Ct. App. 3d Dist. 1981); Graham v. State, 693 S.W.2d 29 (Tex. App. Houston 14th Dist. 1985) (photocopying dollar bill); Hanbury v. Com., 203 Va. 182, 122 S.E.2d 911 (1961) (rubber stamp).
- ² People v. Risley, 214 N.Y. 75, 108 N.E. 200 (1915); State v. Bradley, 116 Tenn. 711, 94 S.W. 605 (1906).
- ³ People v. Avila, 770 P.2d 1330 (Colo. App. 1988).
- ⁴ Davis v. Com., 217 Ky. 801, 290 S.W. 702 (1927); Cooper v. State, 123 Neb. 605, 243 N.W. 837 (1932); Schmidt v. State, 169 Wis. 575, 173 N.W. 638 (1919).

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II. Elements of Offenses

A. In General

§ 9. Possession of forged instrument

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  17

Criminal possession of a forged instrument has three elements: (1) knowledge that the instrument is forged; (2) intent to utter the instrument; and (3) possession of the forged instrument.¹ “Possession” includes both actual and constructive possession.² Mere possession or negotiation of a forged instrument does not in and of itself establish that the defendant knew that the instrument was forged.³ However, combined with some corroborative evidence, however slight, possession of a forged check is enough to support a conviction for forgery.⁴ Knowledge and intent are two separate elements that must each be proven beyond a reasonable doubt by the state in order to convict a defendant of criminal possession of a forged instrument; knowledge alone is not sufficient to hold a defendant criminally liable for possessing a forged instrument.⁵

The ability to manipulate a bank account using a computer is sufficient to constitute dominion and control and thus is possession for purposes of a forgery statute.⁶ An electronic subway ticket satisfies the definition of a “written instrument” in the context of a charge of criminal possession of a forged instrument.⁷

CUMULATIVE SUPPLEMENT

Cases:

Until it was revoked, power of attorney document vested defendant with unlimited power to sign victim’s name on written instruments, precluding any finding that 40 checks signed by defendant, as attorney-in-fact under that document, were forgeries, as required to convict defendant on charges of criminally possessing forged instruments. [McKinney’s Penal Law § 170.25](#). [People v. Ippolito](#), 20 N.Y.3d 615, 964 N.Y.S.2d 499, 987 N.E.2d 276 (2013).

[END OF SUPPLEMENT]

§ 9. Possession of forged instrument, 36 Am. Jur. 2d Forgery § 9

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Footnotes

- ¹ [State v. Thorpe](#), 217 Or. App. 301, 175 P.3d 993 (2007).
As to uttering, generally, see §§ 24, 25.
- ² [State v. Blake](#), 348 Or. 95, 228 P.3d 560 (2010).
- ³ [People v. Roa](#), 8 Misc. 3d 333, 797 N.Y.S.2d 724 (City Crim. Ct. 2005).
- ⁴ [People v. Martinez](#), 127 Cal. App. 4th 1156, 26 Cal. Rptr. 3d 234 (2d Dist. 2005).
- ⁵ [People v. Rodriguez](#), 71 A.D.3d 450, 897 N.Y.S.2d 42 (1st Dep't 2010), leave to appeal granted, 15 N.Y.3d 777, 933 N.E.2d 1059 (2010).
- ⁶ [State v. Blake](#), 348 Or. 95, 228 P.3d 560 (2010).
- ⁷ [People v. Owens](#), 12 Misc. 3d 600, 817 N.Y.S.2d 880 (Sup 2006).
As to instruments subject to being forged, see §§ 33, 34.

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II. Elements of Offenses

B. Criminal Acts

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Research References

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A.L.R. Index, Forgery

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Trial Strategy

[The Dating of Handwriting Through Ink Analysis](#), 35 Am. Jur. Proof of Facts 3d 567

[The Effects of Alterations to Documents](#), 29 Am. Jur. Proof of Facts 3d 549

[Identification of Handprinting and Numerals](#), 24 Am. Jur. Proof of Facts 3d 667

Forms

[Am. Jur. Pleading and Practice Forms, Bills and Notes § 51](#)

[Am. Jur. Pleading and Practice Forms, Securities Regulation § 75](#)

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36 Am. Jur. 2d Forgery § 10

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II. Elements of Offenses

B. Criminal Acts

1. False Writing

§ 10. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  8

Generally, forgery cannot be committed by the genuine making of an instrument for the purpose of defrauding.¹ In other words, the term “falsely,” as applied to the making or altering of a writing in order to make it a forgery, does not refer to the contents or tenor of the writing or to the facts stated therein, but implies that the paper or writing is not genuine, that it is in itself false or counterfeit.² The forged character of a document does not depend so much on whether it contains a falsehood but on whether, on its face, it misrepresents its authenticity; the distinction to be drawn is the difference between an instrument that is falsely made and one that is made falsely.³ Where the falsity lies in the representation of facts, not in the genuineness of execution, it is not forgery.⁴ Hence, such things as a false statement of fact in the body of the instrument or a false assertion of authority to write another’s name, by which a person is deceived and defrauded, is not forgery.⁵ In other words, to show that defendant signed the name of some other person to an instrument, and that he or she passed such instrument as genuine, is not sufficient to establish the commission of the crime of forgery; it must still be shown that it was a false instrument, and this is not established until it is shown that a person who signed another’s name did so without authority.⁶ However, there is authority to the contrary, and in some jurisdictions, the making of a false statement is held to be as much a forgery as is the false making of an instrument.⁷

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Footnotes

¹ State v. Weigel, 194 N.J. Super. 451, 477 A.2d 372 (App. Div. 1984); State v. Baca, 1997-NMSC-018, 123 N.M. 124, 934 P.2d 1053 (1997); State v. Lee-Grigg, 374 S.C. 388, 649 S.E.2d 41 (Ct. App. 2007), cert. granted, (Sept. 18, 2008) and decision aff’d, 387 S.C. 310, 692 S.E.2d 895 (2010); State v. Davis, 105 Wis. 2d 690, 314 N.W.2d 907 (Ct. App. 1981).

² Wright v. U.S., 172 F.2d 310 (9th Cir. 1949); Marteney v. U.S., 216 F.2d 760 (10th Cir. 1954); State v. Escobedo, 404 So. 2d 760 (Fla. Dist. Ct. App. 3d Dist. 1981); State v. Esquivel, 71 Wash. App. 868, 863 P.2d 113 (Div. 3 1993).

³ People v. Asai, 66 A.D.3d 1138, 888 N.Y.S.2d 617 (3d Dep't 2009).

⁴ Gilbert v. U.S., 370 U.S. 650, 82 S. Ct. 1399, 8 L. Ed. 2d 750 (1962); U.S. v. Merklinger, 16 F.3d 670, 1994 FED App. 0032P (6th Cir. 1994); Bratcher v. City of Las Vegas, 113 Nev. 502, 937 P.2d 485 (1997); People v. Asaro, 94 N.Y.2d 792, 699 N.Y.S.2d 706, 721 N.E.2d 956 (1999).
Defendant who used a genuine Social Security card to misrepresent his identity did not implicate the crime of forgery because forgery required predicate act of altering a writing.
State v. Hampton, 756 N.W.2d 49 (Iowa Ct. App. 2008).

⁵ Goucher v. State, 113 Neb. 352, 204 N.W. 967, 41 A.L.R. 227 (1925); People v. Adkins, 236 A.D.2d 850, 653 N.Y.S.2d 1007 (4th Dep't 1997); Dexter Horton Nat. Bank of Seattle v. U.S. Fidelity & Guar. Co., 149 Wash. 343, 270 P. 799 (1928).

⁶ State v. King, 178 N.C. App. 122, 630 S.E.2d 719 (2006).

⁷ § 11.

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36 Am. Jur. 2d Forgery § 11

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II. Elements of Offenses

B. Criminal Acts

1. False Writing

§ 11. Use of one's own name with intent to deceive

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  8

Generally, a person cannot commit forgery by signing his or her own name to an instrument since the signer is both the actual and ostensible maker of that instrument.¹ However, a person may be guilty of making a false instrument, although he or she signs and executes it in his or her own name, if it is false in any material part and calculated to induce another to give credit to it as genuine and authentic when the instrument is not in fact what it purports to be.² Signing one's own name with the intent that the writing be received as written by another person, or impersonating another in the signature of an instrument, or signing in such a way as to make the writing purport to be that of another, are all acts of forgery.³ Thus, a person who knowingly places his or her initials on a postal money order, intending to create the semblance of authenticity, when in fact the money order has been falsely issued, or not issued at all, commits forgery regardless of whether the initials used were his or her own, those of another, or letters of the alphabet randomly selected.⁴

A defendant's signing of a name that, while not legally his or her own, the defendant has adopted or regularly used does not constitute forgery.⁵ However, where the accused has legally changed his or her name, the use of the former name with a fraudulent intent to conceal his or her identity is forgery.⁶

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Footnotes

¹ State v. Rea, 145 Ariz. 298, 701 P.2d 6 (Ct. App. Div. 2 1985); People v. Johnson, 88 A.D.2d 922, 450 N.Y.S.2d 560 (2d Dep't 1982); State v. Blake, 93 Or. App. 128, 760 P.2d 1369 (1988); State v. Jensen, 2004 UT App 467, 105 P.3d 951 (Utah Ct. App. 2004); State v. Smith, 72 Wash. App. 237, 864 P.2d 406 (Div. 2 1993).

Insufficient evidence supported 10 convictions for forgery and accompanying uttering charges based on withdrawal slips defendant presented to bank; although each withdrawal slip contained representation stating defendant was the account holder along with one of victim's account numbers, slips bore defendant's own signature, and did not include victim's name or purported signature, and defendant could not be guilty of forgery for transactions in which she signed

her own name on withdrawal slip. *State v. King*, 178 N.C. App. 122, 630 S.E.2d 719 (2006).

² U.S. v. Fontana, 948 F.2d 796 (1st Cir. 1991); U.S. v. Price, 655 F.2d 958 (9th Cir. 1981); U.S. v. McGovern, 505 F. Supp. 195 (W.D. Pa. 1981), judgment *aff'd*, 661 F.2d 27 (3d Cir. 1981); *People v. Mau*, 377 Ill. 199, 36 N.E.2d 235 (1941); *People v. Susalla*, 392 Mich. 387, 220 N.W.2d 405 (1974); *State v. Lores*, 512 N.W.2d 618 (Minn. Ct. App. 1994); *State v. Hudson*, 793 S.W.2d 872 (Mo. Ct. App. E.D. 1990); *Hill v. Sheriff, Clark County*, 95 Nev. 438, 596 P.2d 234 (1979); *People v. Levitan*, 49 N.Y.2d 87, 424 N.Y.S.2d 179, 399 N.E.2d 1199 (1980); *State v. Bender*, 24 Ohio App. 3d 131, 493 N.E.2d 552 (9th Dist. Lorain County 1985); *Com. v. Williams*, 391 Pa. Super. 389, 571 A.2d 423 (1990); *Edwards v. State*, 835 S.W.2d 660 (Tex. App. Dallas 1992); *State v. Edwards*, 51 Wash. App. 763, 755 P.2d 821 (Div. 2 1988).

³ *Rodriguez v. Com.*, 50 Va. App. 667, 653 S.E.2d 296 (2007).

⁴ U.S. v. Tasher, 453 F.2d 244 (10th Cir. 1972).

⁵ *People v. Kollmann*, 33 Ill. App. 3d 629, 342 N.E.2d 240 (5th Dist. 1975); *State v. Celestine*, 439 So. 2d 426 (La. 1983).

⁶ *Moore v. Com.*, 207 Va. 838, 153 S.E.2d 231 (1967).

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II. Elements of Offenses

B. Criminal Acts

1. False Writing

§ 12. Use of one's own name with intent to deceive—By person bearing same name as another

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  8

A person may be guilty of forgery in fraudulently signing his or her own name when it is identical to the name of a person who should have signed provided that the intent is to have the instrument received as that of the other person and the instrument is of legal efficacy.¹ If, however, no attempt is made to impersonate the other person or to deceive others into believing that the signer is that person, there is no forgery.²

A forgery may be committed by signing one's own name to an instrument intended to be received as that of another although the names are not identical but merely idem sonans.³

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Footnotes

¹ [Nelson v. State](#), 224 Md. 374, 167 A.2d 871 (1961); [Thomas v. First Nat. Bank](#), 101 Miss. 500, 58 So. 478 (1912); [Peoples Bank & Trust Co. v. Fidelity & Cas. Co. of N. Y.](#), 231 N.C. 510, 57 S.E.2d 809, 15 A.L.R.2d 996 (1950).
As to the intent as essential to the commission of forgery, see [§ 5](#).
As to the necessity that the instrument be of legal efficacy in order to constitute forgery, see [§ 29](#).

² [Heavey v. Commercial Nat. Bank](#), 27 Utah 222, 75 P. 727 (1904).

³ [Peoples Bank & Trust Co. v. Fidelity & Cas. Co. of N. Y.](#), 231 N.C. 510, 57 S.E.2d 809, 15 A.L.R.2d 996 (1950).

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II. Elements of Offenses

B. Criminal Acts

1. False Writing

§ 13. Signing as agent

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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A.L.R. Library

[Admissibility on behalf of accused of evidence of similar acts or transactions tending to rebut fraudulent intent, 90 A.L.R.2d 903](#)

Forms

[Am. Jur. Pleading and Practice Forms, Securities Regulation § 75](#) (Third-party complaint in federal court—By broker-dealer firm seeking contribution—Allegations—Forgery of margin account agreement by third-party defendant)

Where authority is given to sign the name of another to a writing, there can be no forgery.¹ Moreover, where one makes or alters an instrument in good faith, with an honest belief in his or her authority to do so, there is no forgery.² Thus, an agent who signs his or her own true name does not commit forgery even where acting as an agent without actual authority.³ Likewise, unless made so by statute, the unauthorized signing of another's name, including that of a corporation, as that party's agent, for fraudulent purposes, does not constitute forgery in some states although it may be some other crime.⁴ On the other hand, it has been held that an agent commits forgery by making or signing an instrument in disobedience to instructions, without authority, or in the improper exercise of his or her authority.⁵

Under federal law, one who executes an instrument purporting on its face to be executed by him or her as an agent, when in fact he or she has no authority to execute such instrument, is not guilty of forgery; this is known as the agency endorsement defense or rule.⁶ The agency endorsement rule applies not only to endorsements but also to any form of unauthorized execution and to both express and implied assertions of authority to act on behalf of another.⁷

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Footnotes

- ¹ U.S. v. Peterson, 808 F.2d 969, 22 Fed. R. Evid. Serv. 433 (2d Cir. 1987); U.S. v. Borges, 620 F. Supp. 1486 (W.D. Tex. 1985); People v. Lindquist, 97 Ill. App. 3d 894, 53 Ill. Dec. 653, 424 N.E.2d 66 (3d Dist. 1981); Crawford v. State, 164 Neb. 231, 82 N.W.2d 1 (1957); People v. Cantarella, 160 Misc. 2d 8, 606 N.Y.S.2d 942 (Sup 1993).
- ² Smith v. Com., 282 S.W.2d 618 (Ky. 1955); State v. Talbot, 160 Me. 103, 198 A.2d 163 (1964); State v. Sotak, 100 W. Va. 652, 131 S.E. 706, 46 A.L.R. 1523 (1926).
- ³ Great American Ins. Co. v. AFS/IBEX Financial Services, Inc., 612 F.3d 800 (5th Cir. 2010) (applying Texas law).
- ⁴ Gilbert v. U.S., 370 U.S. 650, 82 S. Ct. 1399, 8 L. Ed. 2d 750 (1962); People v. Cunningham, 2 N.Y.3d 593, 780 N.Y.S.2d 750, 813 N.E.2d 891 (2004) (constitutes false pretenses, not forgery).
- ⁵ Jordan v. State, 502 N.E.2d 910 (Ind. 1987); State v. Brooks, 555 N.W.2d 446 (Iowa 1996); State v. Richards, 274 Mont. 180, 906 P.2d 222 (1995); State v. Seraphem, 90 N.C. App. 368, 368 S.E.2d 643 (1988).
- ⁶ U.S. v. Adkinson, 392 F. Supp. 2d 1378 (M.D. Ga. 2005).
As to defenses, generally, see §§ 49, 50.
- ⁷ U.S. v. Hunt, 456 F.3d 1255 (10th Cir. 2006).

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II. Elements of Offenses

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1. False Writing

§ 14. Unauthorized use of partner's name

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  8

A member of a trading partnership ordinarily has the authority to sign the partnership name to a check on the partnership funds in a bank, and if he or she does so, the member is not guilty of forgery although the member uses the money thus withdrawn to the prejudice of the firm.¹ If, however, a fund is deposited in the joint name of two persons who are partners, under an express agreement that the fund will be used only for an agreed purpose and will not be withdrawn from the bank except upon the signatures of both, signed personally by themselves, the implied authority which one has, by reason of the relation of one partner to the other, to withdraw the fund does not exist. In this situation, if one partner, with criminal intent, signs his or her own and the other partner's name to a check by which the fund is withdrawn to the prejudice of the latter, the partner signing the check is guilty of forgery.²

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Footnotes

¹ [State v. Sotak, 100 W. Va. 652, 131 S.E. 706, 46 A.L.R. 1523 \(1926\).](#)

² [State v. Sotak, 100 W. Va. 652, 131 S.E. 706, 46 A.L.R. 1523 \(1926\).](#)

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1. False Writing

§ 15. Use of fictitious name

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A.L.R. Library

[Forgery: use of fictitious or assumed name](#), 49 A.L.R.2d 852

The crime of forgery may be committed by the signing of a fictitious or assumed name provided that the instrument is made with intent to defraud.¹ The question of intention to defraud is, however, of vital importance because a person may rightfully and innocently assume and use a name not his or her own.² Additionally, a person who uses a fictitious or assumed name but does not represent that the name represents anyone other than himself or herself does not commit forgery.³ However, one who signs checks with a fictitious name represented to be his or her own could be guilty of forgery if he or she established the checking account with the specific intent at that time to defraud prospective payees of checks.⁴ The use of a fictitious name as an instrument of fraud in the impersonation of the fictional person is as much a forgery as though the fictional character were real.⁵

A defendant's conduct in signing his or her name to the checks of a fictitious person who has an identical name constitutes "forgery" within the ordinary meaning of that term.⁶ Writing the name of a fictitious firm is the same as writing the name of a fictitious person.⁷

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Footnotes

- ¹ U.S. v. Tucker, 473 F.2d 1290 (6th Cir. 1973); Kropp Forge Co. v. Employers' Liability Assur. Corp., Ltd., of London, England, 159 F.2d 536 (C.C.A. 7th Cir. 1947); Hall v. U.S., 372 F.2d 603 (8th Cir. 1967); U.S. v. Price, 655 F.2d 958 (9th Cir. 1981); Howard v. State, 101 P.3d 1054 (Alaska Ct. App. 2004); State v. Bedoni, 161 Ariz. 480, 779 P.2d 355 (Ct. App. Div. 1 1989); Lewis v. Superior Court, 217 Cal. App. 3d 379, 265 Cal. Rptr. 855 (3d Dist. 1990); People v. Cunefare, 102 P.3d 302 (Colo. 2004), as modified on denial of reh'g, (Dec. 20, 2004); State v. Charles, 341 So. 2d 539 (Fla. Dist. Ct. App. 2d Dist. 1977); Mobley v. State, 101 Ga. App. 317, 113 S.E.2d 654 (1960); State v. Meeks, 245 Iowa 1231, 65 N.W.2d 76 (1954); Tate v. State, 961 So. 2d 763 (Miss. Ct. App. 2007); State v. Hudson, 793 S.W.2d 872 (Mo. Ct. App. E.D. 1990); State v. Ruggiero, 43 N.J. Super. 156, 128 A.2d 7 (App. Div. 1956), judgment aff'd, 25 N.J. 292, 135 A.2d 859 (1957); People v. Johnson, 96 A.D.2d 1083, 466 N.Y.S.2d 969 (2d Dep't 1983), order aff'd, 63 N.Y.2d 888, 483 N.Y.S.2d 201, 472 N.E.2d 1029 (1984); State v. Spence, 131 Or. App. 392, 885 P.2d 744 (1994); Com. v. Zabala, 303 Pa. Super. 72, 449 A.2d 583 (1982); State v. Wescott, 316 S.C. 473, 450 S.E.2d 598 (Ct. App. 1994); Ford v. State, 282 S.W.3d 256 (Tex. App. Austin 2009); State v. Lutes, 38 Wash. 2d 475, 230 P.2d 786 (1951); State v. Barnhart, 127 W. Va. 545, 33 S.E.2d 857 (1945).
- ² Rapp v. State, 274 So. 2d 18 (Fla. Dist. Ct. App. 4th Dist. 1973), writ discharged, 281 So. 2d 193 (Fla. 1973); People v. Kelley, 129 Ill. App. 3d 920, 85 Ill. Dec. 204, 473 N.E.2d 572 (3d Dist. 1985); State v. White, 533 N.E.2d 1273 (Ind. Ct. App. 1989); State v. Celestine, 439 So. 2d 426 (La. 1983); State v. Lutes, 38 Wash. 2d 475, 230 P.2d 786 (1951).
- ³ State v. Harrison, 505 So. 2d 783 (La. Ct. App. 2d Cir. 1987), writ denied, 512 So. 2d 433 (La. 1987) and writ denied, 512 So. 2d 434 (La. 1987); State v. Sandoval, 142 N.M. 412, 2007-NMCA-103, 166 P.3d 473 (Ct. App. 2007); People v. Dunn, 185 A.D.2d 54, 592 N.Y.S.2d 299 (1st Dep't 1993).
- ⁴ U.S. v. Metcalf, 388 F.2d 440 (4th Cir. 1968).
- ⁵ Edge v. United States, 270 F.2d 837 (5th Cir. 1959); U.S. v. Ackerman, 393 F.2d 121, 4 A.L.R. Fed. 788 (7th Cir. 1968).
- ⁶ U.S. v. Price, 655 F.2d 958 (9th Cir. 1981).
- ⁷ American Express Co. v. People's Sav. Bank, 192 Iowa 366, 181 N.W. 701 (1921).

36 Am. Jur. 2d Forgery § 16

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Forgery

Marie K. Pesando, J.D.

II. Elements of Offenses

B. Criminal Acts

1. False Writing

§ 16. Capacity or authority of purported signer

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  8

Since a forgery may be committed in a fictitious name as well as in the name of an actual person,¹ it follows that where the name of an actual person is used, it is not essential to the commission of a forgery that the person in whose name the instrument purports to be made has the legal capacity or authority to make it.² It is not necessary that the forged document be facially valid; it is sufficient if the document purports or appears to be legally valid.³ Therefore, the signing of the name of a deceased person to an instrument with intent to defraud constitutes the crime of forgery.⁴ One test used in such cases to determine whether a document is capable of defrauding another is whether a reasonable and ordinary person might be deceived into accepting the document as being true and genuine. Therefore, the document's capacity to defraud must be only apparent, not actual.⁵

Observation:

The appendage of a professional suffix which defendant is not authorized to use, to defendant's real name, constitutes forgery.⁶

Footnotes

¹ § 15.

² Chambers v. State, 22 Ga. App. 748, 97 S.E. 256 (1918).

³ State v. Escobedo, 404 So. 2d 760 (Fla. Dist. Ct. App. 3d Dist. 1981); State v. Meyer, 17 Kan. App. 2d 59, 832 P.2d 357 (1992); State v. Torres, 129 N.M. 51, 2000-NMCA-038, 1 P.3d 433 (Ct. App. 2000); State v. Smith, 72 Wash. App. 237, 864 P.2d 406 (Div. 2 1993).

⁴ Billings v. State, 107 Ind. 54, 6 N.E. 914 (1886); Brewer v. State, 32 Tex. Crim. 74, 22 S.W. 41 (1893).

⁵ People v. Smith, 259 Ill. App. 3d 492, 197 Ill. Dec. 516, 631 N.E.2d 738 (4th Dist. 1994).

⁶ Lohmiller v. State, 884 N.E.2d 903 (Ind. Ct. App. 2008) (defendant added “R.N.” after her name but was not a licensed nurse).

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36 Am. Jur. 2d Forgery § 17

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Forgery

Marie K. Pesando, J.D.

II. Elements of Offenses

B. Criminal Acts

1. False Writing

§ 17. Procurement of genuine signature by fraud

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  8

A.L.R. Library

[Procuring signature by fraud as forgery](#), 11 A.L.R.3d 1074

Generally, the fraudulent procurement of a genuine signature to an instrument does not constitute forgery¹ such as where a person obtains another's signature on an instrument by means of a false and fraudulent representation as to the purpose for which the instrument is to be used.² However, in some jurisdictions, the procuring of a genuine signature to an instrument by fraudulent representations or omissions constitutes forgery.³

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Footnotes

¹ People v. Pfeiffer, 243 Ill. 200, 90 N.E. 680 (1909); Johnson v. State, 87 Miss. 502, 39 So. 692 (1906); Austin v. State, 143 Tenn. 300, 228 S.W. 60, 14 A.L.R. 311 (1921).

² Green v. State, 76 So. 2d 645, 49 A.L.R.2d 847 (Fla. 1954).

³ Warren v. State, 247 Ala. 595, 25 So. 2d 698 (1946); People v. Johnson, 247 Cal. App. 2d 331, 55 Cal. Rptr. 450 (1st Dist. 1966); Com. v. Zaleski, 3 Mass. App. Ct. 538, 336 N.E.2d 877 (1975).

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36 Am. Jur. 2d Forgery § 18

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Forgery

Marie K. Pesando, J.D.

II. Elements of Offenses

B. Criminal Acts

1. False Writing

§ 18. False book entries

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  15

Generally, a false entry in one's own books does not constitute forgery.¹ In the sense of falsity as an element of forgery,² one cannot falsely make or falsely alter his or her own account against another while it is in one's own book and in one's own possession, and before any settlement or adjustment of the same is made whereby some other person has acquired an interest in, or right to, the same, as evidence or otherwise.³ The character of the writing, as being false or fictitious instead of genuine, is not altered by the truth or falsity of the statement that the writing may contain.⁴ However, it is forgery to make false entries in a bank deposit book because such books are, in a sense, the common property of the bank and the customer, and the entries therein constitute evidence between them.⁵ False entries and false additions by clerks, cashiers, and tellers in the books of their employers, whether made to aid in the perpetration of future frauds or to cover up frauds already committed, are punishable as forgery.⁶ The same is true in the case of false entries made in the book or statement of a loan and investment company where the entry was made with the intent to deceive a state agency charged with inspecting the books.⁷

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Footnotes

¹ [State v. Young, 46 N.H. 266, 1865 WL 1379 \(1865\).](#)

² [§§ 10 et seq.](#)

³ [State v. Young, 46 N.H. 266, 1865 WL 1379 \(1865\).](#)

⁴ [State v. Young, 46 N.H. 266, 1865 WL 1379 \(1865\).](#)

⁵ [State v. Arnett, 338 Mo. 907, 92 S.W.2d 897 \(1936\).](#)

§ 18. False book entries, 36 Am. Jur. 2d Forgery § 18

⁶ State v. Chance, 82 Kan. 392, 108 P. 791 (1910).

⁷ State v. Mollicone, 654 A.2d 311 (R.I. 1995).

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36 Am. Jur. 2d Forgery § 19

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II. Elements of Offenses

B. Criminal Acts

2. Alteration of Instrument

§ 19. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#) 10

A.L.R. Library

[Alteration of figures indicating amount of check, bill, or note, without change in written words, as forgery, 64 A.L.R.2d 1029](#)

Trial Strategy

[The Effects of Alterations to Documents, 29 Am. Jur. Proof of Facts 3d 549](#)

Forms

[Am. Jur. Pleading and Practice Forms, Bills and Notes § 51](#) (Complaint, petition, or declaration—By corporate payee—Against subsequent indorser who cashed checks with forged indorsements)

If an instrument is so altered that it is not the instrument signed by the maker, or if words are added to change the effect of

the instrument, and if this is fraudulently and falsely done, it is forgery.¹ Any change in an instrument that alters its legal effect or makes it speak, in a substantial manner, a different legal language or by which any obligation is increased, diminished, or discharged is a forgery.² An alteration, for purposes of forgery, may be accomplished by additions to or subtractions from the instrument such as erasures or deletions of words, numbers, or symbols that change the instrument's effect.³ For example, forgery is committed by—

- altering a lottery ticket to create the impression that it has never been cashed and may still be redeemed, then presenting that ticket for purposes of receiving cash knowing that it has been altered.⁴
- changing a writing from a nonnegotiable instrument into a negotiable promissory note.⁵
- changing an endorsement on a check from a restrictive endorsement to a special endorsement.⁶
- detaching from a promissory note a written condition, made at the same time and upon the same paper.⁷

An alteration need not destroy or impair the validity of an obligation in order to constitute a forgery.⁸ However, any immaterial change that, even if true, would not affect the legal liability of the parties in an action on the instrument does not generally amount to forgery.⁹ Nor is it forgery to add mere surplusage such as by—

- putting in the name of a witness where no witness is required.¹⁰
- changing a middle initial where such is not deemed to constitute a material part of the name.¹¹
- adding one's own name as a payee to a money order made out in blank or otherwise completed.¹²
- changing a memorandum on the back of an instrument where it does not change the legal effect of the instrument.¹³

Altering the numerical figures on an instrument in which the amount payable is plainly expressed in words does not constitute forgery¹⁴ although there is authority to the contrary.¹⁵ Also, the forgery of a check may be established by proving the fraudulent alteration or addition of words or numbers to the incomplete instrument.¹⁶ However, there is no forgery where the alteration was made in good faith, with the honest belief that the one making the alteration had authority to do so¹⁷ or that the alteration was required to bring the instrument into conformity with the understanding of the parties at the time it was executed.¹⁸ In the absence of a statutory provision, completely destroying an instrument by erasing or obliterating its contents with intent to defraud does not constitute forgery.¹⁹

Observation:

Sending multiple commercial solicitation e-mails from the sender's own computer, but that appear to have originated from another person or entity, does not constitute an alteration of a written instrument within the meaning of a forgery statute.²⁰

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Footnotes

- ¹ Greis v. Fidelity & Cas. Co. of N. Y., 19 F. Supp. 480 (N.D. Okla. 1937); Gottlieb v. State, 175 P.3d 664 (Alaska Ct. App. 2008); Harrell v. State, 79 Fla. 220, 83 So. 922 (1920); People v. Murrah, 255 Ill. App. 3d 742, 194 Ill. Dec. 496, 627 N.E.2d 1138 (4th Dist. 1993); Lincoln Bldg. & Loan Ass'n v. Cohen, 292 Ky. 234, 165 S.W.2d 957 (1942); Taylor v. State, 626 S.W.2d 543 (Tex. App. Texarkana 1981), petition for discretionary review refused, (Mar. 10, 1982).
- ² State v. White, 563 N.W.2d 615 (Iowa 1997).
- ³ State v. Lee-Grigg, 374 S.C. 388, 649 S.E.2d 41 (Ct. App. 2007), cert. granted, (Sept. 18, 2008) and decision aff'd, 387 S.C. 310, 692 S.E.2d 895 (2010).
- ⁴ State v. Ferrette, 18 Ohio St. 3d 106, 480 N.E.2d 399 (1985).
- ⁵ State v. Mitton, 37 Mont. 366, 96 P. 926 (1908).
- ⁶ State v. Hamilton, 291 Or. 283, 634 P.2d 208 (1981).

7 State v. Stratton, 27 Iowa 420, 1869 WL 378 (1869).

8 U.S. v. Drumright, 534 F.2d 1383 (10th Cir. 1976).

9 People v. Lewinger, 252 Ill. 332, 96 N.E. 837 (1911); State v. Hendry, 156 Ind. 392, 59 N.E. 1041 (1901); State v. Nelson, 248 Iowa 915, 82 N.W.2d 724, 64 A.L.R.2d 1024 (1957); Stevenson v. Com., 258 Va. 485, 522 S.E.2d 368 (1999).

10 State v. Gherkin, 29 N.C. 206, 7 Ired. 206, 1847 WL 1075 (1847).

11 State v. Higgins, 60 Minn. 1, 61 N.W. 816 (1895).

12 People v. Adkins, 236 A.D.2d 850, 653 N.Y.S.2d 1007 (4th Dep't 1997).

13 State v. Thornburg, 28 N.C. 79, 6 Ired. 79, 1845 WL 1082 (1845).

14 State v. Peterson, 192 So. 2d 293 (Fla. Dist. Ct. App. 2d Dist. 1966); People v. Lewinger, 252 Ill. 332, 96 N.E. 837 (1911); State v. Nelson, 248 Iowa 915, 82 N.W.2d 724, 64 A.L.R.2d 1024 (1957).

15 White v. State, 83 Ark. 36, 102 S.W. 715 (1907); Beiler v. Com., 243 Va. 291, 415 S.E.2d 849, 17 U.C.C. Rep. Serv. 2d 1198 (1992); Lawless v. State, 114 Wis. 189, 89 N.W. 891 (1902).

16 Dillard v. Com., 32 Va. App. 515, 529 S.E.2d 325 (2000).

17 § 16.

18 People v. Reichert, 357 Ill. 205, 191 N.E. 220, 93 A.L.R. 862 (1934); State v. Talbot, 160 Me. 103, 198 A.2d 163 (1964).

19 State v. Thornburg, 28 N.C. 79, 6 Ired. 79, 1845 WL 1082 (1845).

20 People v. Carmack, 34 A.D.3d 1299, 827 N.Y.S.2d 383 (4th Dep't 2006).

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Forgery

Marie K. Pesando, J.D.

II. Elements of Offenses

B. Criminal Acts

2. Alteration of Instrument

§ 20. Unauthorized filling in of blank spaces

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#) 10

According to one view, where one is given the authority to fill in blank spaces on an instrument, filling in the blanks other than as authorized constitutes forgery provided that the other necessary elements of the offense are present.¹ Most often, this version of the offense takes place when one, absent proper authorization, takes a blank check or money order and adds his or her own name as that of the payee² or makes the check payable for an amount greater than that authorized.³ According to another view, if a paper is delivered as a completed instrument, without authority, express or implied, to fill in any blanks or make any changes, subsequent additions are forgeries; but if the paper is delivered as an incomplete instrument with the blanks to be filled in, and the instrument as completed differs from that authorized and intended by the signer, it is not a forgery but a breach of trust.⁴

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Footnotes

¹ U.S. v. Turner, 28 F.3d 981 (9th Cir. 1994); People v. Kubanek, 370 Ill. 646, 19 N.E.2d 573 (1939); Bowman v. State, 398 N.E.2d 1306 (Ind. Ct. App. 1979) (disapproved of on other grounds by, Fitch v. State, 428 N.E.2d 1374 (Ind. Ct. App. 1981)); People v. Levitan, 49 N.Y.2d 87, 424 N.Y.S.2d 179, 399 N.E.2d 1199 (1980).

² State v. Rovin, 21 Ariz. App. 260, 518 P.2d 579, 14 U.C.C. Rep. Serv. 1177 (Div. 2 1974); State v. Brown, 235 Conn. 502, 668 A.2d 1288 (1995); Driver v. U.S., 521 A.2d 254 (D.C. 1987); Com. v. Williams, 391 Pa. Super. 389, 571 A.2d 423 (1990); State v. Edwards, 51 Wash. App. 763, 755 P.2d 821 (Div. 2 1988).

³ Hicks v. State, 176 Ga. 727, 168 S.E. 899, 87 A.L.R. 1166 (1933).

⁴ Abbott v. Rose, 62 Me. 194, 1873 WL 3222 (1873).

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36 Am. Jur. 2d Forgery § 21

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II. Elements of Offenses

B. Criminal Acts

2. Alteration of Instrument

§ 21. Alteration of receipts, canceled checks, or other vouchers

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  10

The altering of a receipt with fraudulent intent constitutes forgery of the receipt.¹ However, it is only where the making or altering brings into existence a false record or instrument that it constitutes forgery.²

A check given in payment of a debt, endorsed by the payee, and paid and canceled by a bank, is the equivalent of a receipt, and any alteration thereof with the intent to defraud constitutes forgery.³ Whether a canceled check, alleged to have been forged by altering after payment, was or was not a valid negotiable instrument is immaterial on the question of forgery.⁴

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Footnotes

¹ [State v. Cowley](#), 79 N.M. 49, 439 P.2d 567 (Ct. App. 1968).

² [Com. v. Sneddon](#), 1999 PA Super 238, 738 A.2d 1026 (1999).

³ [Bunker v. State](#), 77 Tex. Crim. 38, 177 S.W. 108 (1915).

⁴ [Gordon v. Com.](#), 100 Va. 825, 41 S.E. 746 (1902).

36 Am. Jur. 2d Forgery § 22

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Forgery

Marie K. Pesando, J.D.

II. Elements of Offenses

B. Criminal Acts

2. Alteration of Instrument

§ 22. Alteration of receipts, canceled checks, or other vouchers—By raising amount

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  10

The alteration of a receipt¹ or of a canceled check² with intent to defraud, by changing the true amount to a larger one, constitutes forgery.

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Footnotes

¹ Brooks v. Gray-Von Allmen Sanitary Milk Co., 211 Ky. 462, 277 S.W. 816, 46 A.L.R. 1207 (1925).

² Nix v. State, 20 Okla. Crim. 373, 202 P. 1042, 26 A.L.R. 1053 (1922); Beiler v. Com., 243 Va. 291, 415 S.E.2d 849, 17 U.C.C. Rep. Serv. 2d 1198 (1992).

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36 Am. Jur. 2d Forgery § 23

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II. Elements of Offenses

B. Criminal Acts

2. Alteration of Instrument

§ 23. Alteration of receipts, canceled checks, or other vouchers—By changing dates

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  10

Changing the date of a receipt, thereby making the receipt evidence of a payment at a time different from the original date, may constitute forgery if it is done to prejudice the rights of another or to more easily or successfully enable the party altering the receipt to obtain a greater credit for money paid.¹ Thus, changing the date of a receipt in full of all demands to date,² or inserting in an undated receipt given on the settlement of an account of a date after the actual date of settlement, so as to make it cover items bought after the actual settlement, constitutes forgery.³

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Footnotes

¹ [State v. Kattlemann, 35 Mo. 105, 1864 WL 2858 \(1864\).](#)

² [Barnum v. State, 15 Ohio 717, 1846 WL 157 \(1846\).](#)

³ [State v. Maxwell, 47 Iowa 454, 1877 WL 822 \(1877\).](#)

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36 Am. Jur. 2d Forgery § 24

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Forgery

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II. Elements of Offenses

B. Criminal Acts

3. Uttering

§ 24. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  16

Concomitant to the act of forgery is the uttering of a forged instrument.¹ Uttering is an offense at common law² and is distinct from forgery.³ “Uttering” is a term of art used to distinguish the actual forgery from the passing or publishing and as used in the law of forgery is synonymous with publishing.⁴ Sometimes, however, the two are held to constitute a single offense when committed by the same person in the course of the same transaction.⁵ The distinction between them may be blurred, or even entirely obliterated, by statute.⁶

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¹ U.S. v. Jenkins, 347 F.2d 345 (4th Cir. 1965); Clark v. State, 114 So. 2d 197, 80 A.L.R.2d 261 (Fla. Dist. Ct. App. 1st Dist. 1959); Mobley v. State, 101 Ga. App. 317, 113 S.E.2d 654 (1960); State v. Booton, 85 Idaho 51, 375 P.2d 536 (1962); Smith v. Com., 307 S.W.2d 201 (Ky. 1957); State v. Talbot, 160 Me. 103, 198 A.2d 163 (1964); State v. Phillips, 127 Mont. 381, 264 P.2d 1009 (1953); Crawford v. State, 164 Neb. 231, 82 N.W.2d 1 (1957); Boyer v. State, 68 Okla. Crim. 220, 97 P.2d 779 (1939); State v. Green, 89 Utah 437, 57 P.2d 750 (1936); State v. Johnson, 56 Wash. 2d 700, 355 P.2d 13 (1960).

As to the elements of uttering, see § 25.

² Com. v. Searle, 2 Binn. 332, 1810 WL 1288 (Pa. 1810).

³ People v. Sutherland, 17 Cal. App. 4th 602, 21 Cal. Rptr. 2d 752 (1st Dist. 1993); Mobley v. State, 101 Ga. App. 317, 113 S.E.2d 654 (1960); Stroup v. State, 810 N.E.2d 355 (Ind. Ct. App. 2004); State v. Nelson, 279 N.W.2d 1 (Iowa 1979); State v. Talbot, 160 Me. 103, 198 A.2d 163 (1964); State v. DeGina, 42 N.C. App. 156, 256 S.E.2d 275 (1979); State v. McGhee, 37 Ohio App. 3d 54, 523 N.E.2d 864 (8th Dist. Cuyahoga County 1987); State v. Baldwin, 206 Or. App. 643, 138 P.3d 867 (2006); Dillard v. Com., 32 Va. App. 515, 529 S.E.2d 325 (2000).

⁴ State v. Singh, 4 Ariz. App. 273, 419 P.2d 403 (1966).

⁵ U.S. v. Carpenter, 151 F. 214 (C.C.A. 9th Cir. 1907); State v. Klugherz, 91 Minn. 406, 98 N.W. 99 (1904).

⁶ People v. Sutherland, 17 Cal. App. 4th 602, 21 Cal. Rptr. 2d 752 (1st Dist. 1993); People v. Pfeiffer, 243 Ill. 200, 90 N.E. 680 (1909); State v. Hardin, 645 S.W.2d 163 (Mo. Ct. App. S.D. 1982); State v. Havens, 91 Ohio App. 578, 49 Ohio Op. 161, 109 N.E.2d 48 (6th Dist. Sandusky County 1951); Taylor v. State, 626 S.W.2d 543 (Tex. App. Texarkana 1981), petition for discretionary review refused, (Mar. 10, 1982).

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36 Am. Jur. 2d Forgery § 25

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II. Elements of Offenses

B. Criminal Acts

3. Uttering

§ 25. Elements

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#) 10

The elements of uttering are:¹

- the defendant's knowledge of the instrument's falsity
- an intent to defraud
- presentation of the forged instrument for payment

The crime of uttering does not require proof that the defendant produced or altered a writing or that the instrument be negotiated.²

Generally, the mere offer of the false instrument with fraudulent intent constitutes an uttering or publishing, the essence of the offense being, as in the case of forgery, the fraudulent intent regardless of its successful consummation.³ Since it is axiomatic that in order to be convicted of uttering a forged instrument, the writing that is the basis for the conviction must, in fact, be a forgery,⁴ and the very essence of the offense of uttering a forged instrument is the nature of the written instrument, one who passes a forged instrument in good faith, entirely innocent of the fact that it is a forgery, cannot be convicted of uttering a forged instrument.⁵ The crime of uttering a forged instrument is completed by presentation of the forged instrument for payment,⁶ regardless of whether or not the bank actually makes any payment to the defendant.⁷

Depositing a forged check into an automatic teller machine constitutes uttering.⁸ Similarly, one who finds checks belonging to another, takes them to a bank and endorses them, thereby represents that he or she is the rightful owner of the checks, and thus knowingly utters a forged document.⁹

Signing a false name on an electronic screen, to complete the process of applying for a commercial driver's license, has been held to constitute "uttering" even though defendant left before he obtained the license.¹⁰

CUMULATIVE SUPPLEMENT

Cases:

Defendant's use of victims' debit card and personal identification number (PIN) that he forcefully obtained during robbery to withdraw cash from an ATM was sufficient evidence to support his conviction for forgery; defendant's use of victims' PIN was an attempt to defraud bank by purporting to be the victims. [West's A.I.C. 35-43-5-2. Anthony v. State, 56 N.E.3d 670 \(Ind. Ct. App. 2016\)](#), transfer denied (Ind. Sept. 1, 2016).

[END OF SUPPLEMENT]

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Footnotes

- ¹ [People v. Prantil, 169 Cal. App. 3d 592, 215 Cal. Rptr. 372 \(4th Dist. 1985\); Forbes v. State, 210 So. 2d 246 \(Fla. Dist. Ct. App. 3d Dist. 1968\); Miller v. State, 693 N.E.2d 602 \(Ind. Ct. App. 1998\); People v. Shively, 230 Mich. App. 626, 584 N.W.2d 740 \(1998\); Duhart v. State, 927 So. 2d 768 \(Miss. Ct. App. 2006\); State v. Sanford, 605 S.W.2d 219 \(Mo. Ct. App. E.D. 1980\); State v. Ward, 1 Neb. App. 558, 510 N.W.2d 320 \(1993\); People v. Chaitin, 94 A.D.2d 705, 462 N.Y.S.2d 61 \(2d Dep't 1983\), order aff'd, 61 N.Y.2d 683, 472 N.Y.S.2d 597, 460 N.E.2d 1082 \(1984\); State v. Thompson, 62 N.C. App. 585, 303 S.E.2d 85 \(1983\); State v. Wescott, 316 S.C. 473, 450 S.E.2d 598 \(Ct. App. 1994\).](#)
It is not sufficient for the State to show that the defendant should have known the instrument was forged, in order to prove uttering of forged instruments; instead, the State is required to prove the defendant had actual knowledge that the check had been forged. [Ginn v. State, 26 So. 3d 706 \(Fla. Dist. Ct. App. 2d Dist. 2010\)](#).
- ² [Bennett v. Com., 48 Va. App. 354, 631 S.E.2d 332 \(2006\)](#).
- ³ [U.S. v. Holmes, 453 F.2d 950 \(10th Cir. 1972\); Faulkner v. State, 16 Ark. App. 128, 697 S.W.2d 537 \(1985\); Bailey v. State, 450 A.2d 400 \(Del. 1982\); Short v. U.S., 676 A.2d 910 \(D.C. 1996\); Hazen v. Mayo, 90 So. 2d 123 \(Fla. 1956\); Henderson v. State, 572 So. 2d 972 \(Fla. Dist. Ct. App. 3d Dist. 1990\), decision approved, 583 So. 2d 1030 \(Fla. 1991\); Crowder v. State, 218 Ga. App. 630, 462 S.E.2d 754 \(1995\); State v. Weaver, 149 Iowa 403, 128 N.W. 559 \(1910\); Levy v. State, 225 Md. 201, 170 A.2d 216 \(1961\); People v. Fudge, 66 Mich. App. 625, 239 N.W.2d 686 \(1976\); State v. Lores, 512 N.W.2d 618 \(Minn. Ct. App. 1994\); State v. Hayes, 602 S.W.2d 29 \(Mo. Ct. App. W.D. 1980\); State v. Kelly, 27 N.M. 412, 202 P. 524, 21 A.L.R. 156 \(1921\); State v. Kirkpatrick, 343 N.C. 285, 470 S.E.2d 54 \(1996\); Vann v. State, 21 Okla. Crim. 298, 207 P. 102 \(1922\); McGee v. State, 681 S.W.2d 31 \(Tex. Crim. App. 1984\); State v. Machon, 112 Wis. 2d 47, 331 N.W.2d 665 \(Ct. App. 1983\).](#)
- ⁴ [Brown v. Com., 56 Va. App. 178, 692 S.E.2d 271 \(2010\)](#).
- ⁵ [Ginn v. State, 26 So. 3d 706 \(Fla. Dist. Ct. App. 2d Dist. 2010\)](#).
- ⁶ [Linn v. State, 921 So. 2d 830 \(Fla. Dist. Ct. App. 2d Dist. 2006\); Bell v. State, 284 Ga. 790, 671 S.E.2d 815 \(2009\)](#).
- ⁷ [Linn v. State, 921 So. 2d 830 \(Fla. Dist. Ct. App. 2d Dist. 2006\)](#).
- ⁸ [State v. Tolliver, 149 Wis. 2d 166, 440 N.W.2d 571 \(Ct. App. 1989\)](#).
- ⁹ [McQuinn v. Com., 2009 WL 1586009 \(Va. Ct. App. 2009\)](#).
- ¹⁰ [Bennett v. Com., 48 Va. App. 354, 631 S.E.2d 332 \(2006\)](#).

Works.

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II. Elements of Offenses

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West's Key Number Digest, [Forgery](#)  7(1), 12(.5) to 12(5)

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36 Am. Jur. 2d Forgery § 26

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II. Elements of Offenses


C. Instrument Capable of Deceiving

1. In General

§ 26. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  7(1), 12(.5)

A false instrument must be capable of deceiving; otherwise, the issuance or utterance thereof does not constitute an offense.¹ The forged instrument, however, need not be perfect in its resemblance to the instrument it is intended to represent.² It is sufficient if it bears such a resemblance to the document as may deceive³ a person of reasonable and ordinary observation or business capacity although experts or persons of experience could not be deceived by it.⁴ If the resemblance to the genuine instrument is sufficiently close that there is a bare possibility of imposing the instrument on another as genuine, it is sufficient to constitute a forgery.⁵

In some jurisdictions, the forged instrument need not be facially valid⁶ although others have held that a writing that is invalid or void on its face cannot support a charge of forgery.⁷ At a minimum, the instrument must possess some apparent legal efficacy or be capable of having a legal effect if genuine.⁸

CUMULATIVE SUPPLEMENT

Cases:

For a document to be apparently capable of defrauding another for forgery purposes, a document need not be in due legal form or be so skillfully prepared that it requires an expert to detect that it is fraudulent; rather, the test of whether a forged document is apparently capable of defrauding another is whether a reasonable person might be deceived into accepting the document as genuine, and thus, a document's capacity to defraud another need be only apparent, not actual. S.H.A. [720 ILCS 5/17-3\(a\)\(1, 2\), \(c, c-5\)](#). [People v. Lawson](#), 2015 IL App (2d) 140604, 390 Ill. Dec. 41, 28 N.E.3d 210 (App. Ct. 2d Dist. 2015).

[END OF SUPPLEMENT]

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Footnotes

- ¹ Goodman v. People, 228 Ill. 154, 81 N.E. 830 (1907); Smith v. State, 7 Md. App. 457, 256 A.2d 357 (1969).
- ² U.S. v. Gomes, 969 F.2d 1290 (1st Cir. 1992).
- ³ U.S. v. Hammoude, 51 F.3d 288 (D.C. Cir. 1995); In re Parker, 57 Cal. App. 2d 388, 134 P.2d 302 (2d Dist. 1943); State v. Burns, 351 Mo. 163, 172 S.W.2d 259 (1943).
- ⁴ People v. Smith, 259 Ill. App. 3d 492, 197 Ill. Dec. 516, 631 N.E.2d 738 (4th Dist. 1994); Commonwealth v. Fenwick, 177 Ky. 685, 198 S.W. 32 (1917).
- ⁵ State v. Woods, 112 La. 617, 36 So. 626 (1904).
- ⁶ State v. Torres, 129 N.M. 51, 2000-NMCA-038, 1 P.3d 433 (Ct. App. 2000).
- ⁷ Nikolic v. State, 439 So. 2d 828 (Ala. Crim. App. 1983); State v. Meyer, 17 Kan. App. 2d 59, 832 P.2d 357 (1992).
- ⁸ §§ 29 et seq.

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36 Am. Jur. 2d Forgery § 27

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II. Elements of Offenses

C. Instrument Capable of Deceiving

1. In General

§ 27. Effect of illegibility, misspelling, and poor composition

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  7(1)

Generally, it is forgery to utter a false instrument that, although very crudely composed and poorly written and spelled, is sufficiently complete to be calculated to deceive or to be used to defraud.¹ The fact that the handwriting of the instrument is clumsy, illegible, and difficult to decipher does not preclude it from being a forgery where it is not entirely unintelligible and there is a bare possibility that it would deceive.² However, an attempt to sign the name of an existing person to an instrument that is so imperfect or inaccurate that one of ordinary prudence would not be deceived by it does not constitute forgery.³ The instrument must at least have the similitude of a genuine instrument, and the resemblance must be such as would be reasonably calculated to mislead or deceive.⁴

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¹ [Commonwealth v. Fenwick](#), 177 Ky. 685, 198 S.W. 32 (1917).

² [State v. Gryder](#), 44 La. Ann. 962, 11 So. 573 (1892).

³ [State v. Warren](#), 109 Mo. 430, 19 S.W. 191 (1892).

⁴ [U.S. v. Hammoude](#), 51 F.3d 288 (D.C. Cir. 1995); [State v. Leonard](#), 171 Mo. 622, 71 S.W. 1017 (1903).

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II. Elements of Offenses

C. Instrument Capable of Deceiving

1. In General

§ 28. Effect of misspelling of name forged

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West's Key Number Digest

West's Key Number Digest, [Forgery](#) 7(1)

If a name actually signed is idem sonans with the true name, or so resembles it that it is calculated to deceive, or if the instrument is used to defraud or impose upon another, its utterance constitutes an offense although the name is misspelled or is not the full name intended to be imitated.¹

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¹ State v. Chance, 82 Kan. 388, 108 P. 789 (1910) ("Heinis" for "Hein"); Commonwealth v. Fenwick, 177 Ky. 685, 198 S.W. 32 (1917); Rice v. State, 484 S.W.2d 589 (Tex. Crim. App. 1972); State v. Barnhart, 127 W. Va. 545, 33 S.E.2d 857 (1945) ("Shilling" for "Schilling").

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II. Elements of Offenses


C. Instrument Capable of Deceiving

2. Instrument Apparently Efficacious

§ 29. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  12(.5) to 12(4)

A writing or instrument, in order to constitute a forgery, must possess some apparent legal efficacy.¹ Thus, a document that is so irregular that a bank would be justified in denying payment on it may nevertheless support a forgery charge so long as it does not lack apparent legal efficacy² unless it is so incomplete as to lack legal efficacy even if genuine.³ An overdue check that is apparently capable of defrauding others can support a forgery prosecution,⁴ but a false writing that gives rise to no legal duty,⁵ such as an instrument that would not deceive anyone,⁶ cannot. It is sufficient to constitute forgery if upon its face it could be made the foundation of legal liability⁷ or if there is a reasonable possibility that the false writing or instrument may operate to cause injury⁸ although no actual injury is necessary.⁹ As long as a forged instrument is the apparent foundation of legal liability, the instrument need not be complete in all its particulars to amount to forgery.¹⁰ Where it appears, therefore, either from the face of a falsely made instrument or from extrinsic circumstances that it cannot by any possibility operate to the prejudice of another's right, the making of such a writing does not constitute forgery.¹¹ Thus, for example, inasmuch as a will is essentially ambulatory during the lifetime of the maker, subject to revocation by the maker at any time, and cannot possibly take effect until the maker's death, it is not subject to forgery where the making of the instrument occurs during the life of the testator.¹² Conversely, an instrument valid on its face, or of some apparent legal efficacy, may be the subject of forgery, even though collateral or extrinsic facts may exist that would render it absolutely void, if genuine.¹³ Where the instrument does not appear to have any legal validity or show that another might be injured by it, but extrinsic facts exist by which the holder of the paper might be enabled to defraud another, then the offense of forgery is complete.¹⁴

Observation:

The element of forgery requiring that the defendant has falsely made or altered an instrument purporting to have "legal efficacy" does not include instances where the sole legal value of the instrument is its potential use as evidence.¹⁵

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- ¹ Johnson v. State, 412 So. 2d 822 (Ala. Crim. App. 1981); State v. Sandoval, 142 N.M. 412, 2007-NMCA-103, 166 P.3d 473 (Ct. App. 2007); State v. Lee-Grigg, 374 S.C. 388, 649 S.E.2d 41 (Ct. App. 2007), cert. granted, (Sept. 18, 2008) and decision aff'd, 387 S.C. 310, 692 S.E.2d 895 (2010); State v. Young, 97 Wash. App. 235, 984 P.2d 1050, 39 U.C.C. Rep. Serv. 2d 799 (Div. 1 1999).
- ² Muhammad v. Com., 13 Va. App. 194, 409 S.E.2d 818 (1991).
- ³ State v. Smith, 72 Wash. App. 237, 864 P.2d 406 (Div. 2 1993).
- ⁴ People v. Connell, 91 Ill. App. 3d 326, 46 Ill. Dec. 743, 414 N.E.2d 796 (5th Dist. 1980).
- ⁵ People v. Gaul-Alexander, 32 Cal. App. 4th 735, 38 Cal. Rptr. 2d 176 (5th Dist. 1995).
For purpose of the requirement that an instrument must purport to have legal efficacy in order to be a subject of forgery, a noncarbon record (NCR) of a check is not necessary to any transaction and creates no obligations on the part of the indicated maker or payee.
State v. Cearley, 135 N.M. 710, 2004-NMCA-079, 92 P.3d 1284 (Ct. App. 2004).
- ⁶ U.S. v. Hammoude, 51 F.3d 288 (D.C. Cir. 1995).
An instrument is not the subject matter of forgery only where it is so defective on its face that, as a matter of law, it is not capable of defrauding anyone. DeShazer v. State, 94 Ark. App. 363, 230 S.W.3d 285 (2006).
- ⁷ State v. Sandoval, 142 N.M. 412, 2007-NMCA-103, 166 P.3d 473 (Ct. App. 2007).
- ⁸ Gordon v. Com., 100 Va. 825, 41 S.E. 746 (1902).
- ⁹ U.S. v. Plyler, 222 U.S. 15, 32 S. Ct. 6, 56 L. Ed. 70 (1911).
- ¹⁰ State v. Lee-Grigg, 374 S.C. 388, 649 S.E.2d 41 (Ct. App. 2007), cert. granted, (Sept. 18, 2008) and decision aff'd, 387 S.C. 310, 692 S.E.2d 895 (2010).
- ¹¹ Gooch v. State, 249 Ala. 477, 31 So. 2d 776, 174 A.L.R. 1297 (1947); Lewis v. Superior Court, 217 Cal. App. 3d 379, 265 Cal. Rptr. 855 (3d Dist. 1990); Goodman v. People, 228 Ill. 154, 81 N.E. 830 (1907); State v. Floyd, 169 Ind. 136, 81 N.E. 1153 (1907); Ex parte Farrell, 36 Mont. 254, 92 P. 785 (1907); People v. Drayton, 168 N.Y. 10, 60 N.E. 1048 (1901).
- ¹² Huckaby v. State, 45 Tex. Crim. 577, 78 S.W. 942 (1904).
- ¹³ State v. Blodgett, 143 Iowa 578, 121 N.W. 685 (1909); State v. Meyer, 17 Kan. App. 2d 59, 832 P.2d 357 (1992); Boyer v. State, 68 Okla. Crim. 220, 97 P.2d 779 (1939); State v. Webster, 88 S.C. 56, 70 S.E. 422 (1911).
- ¹⁴ Peoples Bank & Trust Co. v. Fidelity & Cas. Co. of N. Y., 231 N.C. 510, 57 S.E.2d 809, 15 A.L.R.2d 996 (1950); Forcy v. State, 60 Tex. Crim. 206, 131 S.W. 585 (1910).
- ¹⁵ State v. Cearley, 135 N.M. 710, 2004-NMCA-079, 92 P.3d 1284 (Ct. App. 2004).

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II. Elements of Offenses


C. Instrument Capable of Deceiving

2. Instrument Apparently Efficacious

§ 30. Effect of obvious invalidity, illegality, or incompleteness

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  12(.5) to 12(4)

Although generally a charge of forgery may not be predicated upon an instrument that has no efficacy to injure,¹ forgery may be committed with an instrument whose issuance or transfer is in violation of law where it is not rendered totally void or if its capacity for valuable use for any purpose is not totally destroyed.² Similarly, a forgery may be committed by means of an instrument which if genuine would be invalid as against public policy, at least where there is any uncertainty as to whether it would judicially be declared void on its face.³ Moreover, an instrument may be the subject of forgery even though, if it were genuine, other steps would have to be taken before it would be perfected,⁴ such as where, in order to complete its legal effectiveness, it needs endorsement.⁵ However, an instrument that is so incomplete that it would lack legal efficacy even if genuine cannot support a charge of forgery.⁶

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¹ §§ 29 et seq.

² *Gooch v. State*, 249 Ala. 477, 31 So. 2d 776, 174 A.L.R. 1297 (1947).

³ *Harper v. State*, 394 So. 2d 311 (Miss. 1981); *Burks v. State*, 795 S.W.2d 913 (Tex. App. Amarillo 1990), petition for discretionary review refused, (Feb. 20, 1991).

⁴ *Hall v. State*, 31 Ala. App. 455, 18 So. 2d 572 (1944); *Muhammad v. Com.*, 13 Va. App. 194, 409 S.E.2d 818 (1991); *State v. Young*, 97 Wash. App. 235, 984 P.2d 1050, 39 U.C.C. Rep. Serv. 2d 799 (Div. 1 1999); *State v. Perry*, 215 Wis. 2d 696, 573 N.W.2d 876 (Ct. App. 1997).

⁵ *Cartwright v. State*, 482 So. 2d 1306 (Ala. Crim. App. 1985); *Muhammad v. Com.*, 13 Va. App. 194, 409 S.E.2d 818

(1991); *Norton v. State*, 129 Wis. 659, 109 N.W. 531 (1906).

⁶ *State v. Smith*, 72 Wash. App. 237, 864 P.2d 406 (Div. 2 1993) (check lacking drawer's signature).

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II. Elements of Offenses

D. Intent to Defraud

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36 Am. Jur. 2d Forgery § 31

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II. Elements of Offenses

D. Intent to Defraud

§ 31. Generally

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West's Key Number Digest

West's Key Number Digest, [Forgery](#)  5

Fraudulent intent is of the essence of forgery and is particularly expressed in most if not all of the forgery statutes¹ although an intent to injure may also be sufficient under some statutes.² An intent to defraud, as required to support a charge for forgery, involves an intent to deceive and thereby work a reliance and an injury; there must be a potential benefit to the maker or potential injury to the defrauded party.³ This intent may relate to a person not named in the instrument⁴ or to a state, county, or municipality even though the statute in its terms refers to the prejudice of the rights of persons.⁵ Forgery against the government or the public need not deprive them of money or property in order for the purpose to defraud element of forgery to be met; so long as the accused has the purpose to frustrate the administration of justice, the element is met.⁶ It is not necessary that the intent be directed to any particular person.⁷ The intent to defraud does not depend on the personal advantage of the perpetrator.⁸

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¹ U.S. v. White, 611 F.2d 531, 5 Fed. R. Evid. Serv. 896 (5th Cir. 1980); U.S. v. Maude, 481 F.2d 1062 (D.C. Cir. 1973); State v. McMurry, 184 Ariz. 447, 909 P.2d 1084 (Ct. App. Div. 1 1995); State v. Henderson, 47 Conn. App. 542, 706 A.2d 480 (1998); McClendon v. State, 290 So. 2d 77 (Fla. Dist. Ct. App. 2d Dist. 1974); Tucker v. State, 283 Ga. App. 428, 641 S.E.2d 653 (2007); People v. Reichert, 357 Ill. 205, 191 N.E. 220, 93 A.L.R. 862 (1934); Thornton v. State, 636 N.E.2d 140 (Ind. Ct. App. 1994); Smith v. Com., 282 S.W.2d 618 (Ky. 1955); State v. Franklin, 956 So. 2d 823 (La. Ct. App. 2d Cir. 2007), amended on reh'g, (June 14, 2007) and writ denied, 972 So. 2d 1162 (La. 2008); People v. Worden, 91 Mich. App. 666, 284 N.W.2d 159 (1979); Criddle v. State, 250 Miss. 328, 165 So. 2d 339 (1964); State v. Hudson, 793 S.W.2d 872 (Mo. Ct. App. E.D. 1990); State v. Morales, 129 N.M. 141, 2000-NMCA-046, 2 P.3d 878 (Ct. App. 2000); State v. Lee-Grigg, 374 S.C. 388, 649 S.E.2d 41 (Ct. App. 2007), cert. granted, (Sept. 18, 2008) and decision aff'd, 387 S.C. 310, 692 S.E.2d 895 (2010); Board of Professional Responsibility v. Curry, 266 S.W.3d 379 (Tenn. 2008); State v. Kelly, 183 W. Va. 509, 396 S.E.2d 471 (1990). As to intent to defraud as not being an element of the crime of forging the signature of a federal judge, see § 2.

- ² Green v. State, 76 So. 2d 645, 49 A.L.R.2d 847 (Fla. 1954).
- ³ Diallo v. State, 928 N.E.2d 250 (Ind. Ct. App. 2010).
- ⁴ State v. Wasson, 125 N.M. 656, 1998-NMCA-087, 964 P.2d 820 (Ct. App. 1998).
- ⁵ U.S. v. Hester, 598 F.2d 247 (D.C. Cir. 1979); People v. Russel, 214 Cal. App. 2d 445, 29 Cal. Rptr. 562 (4th Dist. 1963); Hanbury v. Com., 203 Va. 182, 122 S.E.2d 911 (1961).
A governmental agency or the public generally are proper subjects of fraud for purposes of the purpose to defraud element of forgery. State v. Smothers, 297 S.W.3d 626 (Mo. Ct. App. W.D. 2009).
- ⁶ State v. Smothers, 297 S.W.3d 626 (Mo. Ct. App. W.D. 2009).
- ⁷ Morrison v. State, 469 P.2d 125 (Alaska 1970); State v. Thompson, 194 Ariz. 295, 981 P.2d 595, 108 A.L.R.5th 859 (Ct. App. Div. 1 1999); State v. Watkins, 532 So. 2d 1187 (La. Ct. App. 1st Cir. 1988); State v. Smothers, 297 S.W.3d 626 (Mo. Ct. App. W.D. 2009); State v. DeMatteo, 134 N.H. 296, 591 A.2d 1323 (1991); State v. Wasson, 125 N.M. 656, 1998-NMCA-087, 964 P.2d 820 (Ct. App. 1998); People v. Dallas, 46 A.D.3d 489, 848 N.Y.S.2d 132 (1st Dep't 2007), leave to appeal denied, 10 N.Y.3d 809, 857 N.Y.S.2d 43, 886 N.E.2d 808 (2008); State v. Lee-Grigg, 374 S.C. 388, 649 S.E.2d 41 (Ct. App. 2007), cert. granted, (Sept. 18, 2008) and decision aff'd, 387 S.C. 310, 692 S.E.2d 895 (2010); State v. Winward, 909 P.2d 909 (Utah Ct. App. 1995); Thomas v. State, 667 P.2d 658 (Wyo. 1983).
- ⁸ State v. Marler, 428 So. 2d 954 (La. Ct. App. 1st Cir. 1983), writ denied, 433 So. 2d 151 (La. 1983); People v. Esrig, 240 A.D. 300, 270 N.Y.S. 372 (3d Dep't 1934); State v. Lee-Grigg, 374 S.C. 388, 649 S.E.2d 41 (Ct. App. 2007), cert. granted, (Sept. 18, 2008) and decision aff'd, 387 S.C. 310, 692 S.E.2d 895 (2010).

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II. Elements of Offenses

D. Intent to Defraud

§ 32. Effect of success or failure of fraudulent intent

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West's Key Number Digest

West's Key Number Digest, [Forgery](#)  5

It is not necessary, in order to constitute forgery, that the fraudulent intent be carried out to successful accomplishment.¹ It is immaterial that the person intended to be defrauded could not have been imposed on or that the instrument remained in the forger's possession.² Similarly, to constitute the offense of uttering, it is not necessary that the forged writing was actually received as genuine by the person to whom it was offered or that the attempt to defraud was successful.³

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Footnotes

¹ [Johnson v. State](#), 412 So. 2d 822 (Ala. Crim. App. 1981); [State v. Singh](#), 4 Ariz. App. 273, 419 P.2d 403 (1966); [Flick v. State](#), 455 N.E.2d 339 (Ind. 1983); [State v. Desdunes](#), 576 So. 2d 520 (La. Ct. App. 4th Cir. 1990), writ granted and transferred, 577 So. 2d 1011 (La. 1990); [People v. Esrig](#), 240 A.D. 300, 270 N.Y.S. 372 (3d Dep't 1934).

² [People v. Campbell](#), 160 Mich. 108, 125 N.W. 42 (1910).

³ [Maloney v. State](#), 91 Ark. 485, 121 S.W. 728 (1909); [Walker v. State](#), 127 Ga. 48, 56 S.E. 113 (1906); [State v. Phalen](#), 192 W. Va. 267, 452 S.E.2d 70 (1994).

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III. Instruments Subject to Being Forged

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West's Key Number Digest


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Primary Authority

[18 U.S.C.A. §§ 470 to 514](#)

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III. Instruments Subject to Being Forged

§ 33. Generally

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A.L.R. Library

[Falsifying of money order as forgery, 65 A.L.R.3d 1307](#)

[Signing credit charge or credit sales slip, as forgery, 90 A.L.R.2d 822](#)

[What constitutes forgery of signature of federal judge or of other officer of federal court, so as to violate 18 U.S.C.A. sec. 505, 71 A.L.R. Fed. 928](#)

[Construction and application of 18 U.S.C.A. sec. 499 making it criminal offense to falsely make, forge, counterfeit, alter, tamper with, or misuse naval, military, or official passes or permits, 24 A.L.R. Fed. 189](#)

Courts have avoided a strictly categorical approach to defining the instruments of forgery.¹ The crime of forgery covers nearly every class of instruments known to the law as affecting private or public rights.² Generally, however, the substance of the instrument as distinguished from its form is determinative of whether it will support a charge of forgery.³ The question most often arising on the character of the instrument relates not so much to the matter of generic classification as to the more specific inquiry into whether the instrument imports or embodies some one or more of the other elements of the crime, especially falsity and, on the assumption of genuineness, efficacy to affect the rights of others.⁴ Some statutes prohibit the forgery of an instrument that may otherwise affect a legal right, interest, obligation, or status. Such statutes encompass not only instruments affecting pecuniary interests but also instruments having other legal effects such as a letter forged with intent to secure the dismissal of pending criminal charges.⁵

In one jurisdiction, a false urine sample qualifies as an inauthentic item, for purposes of forgery, because it purports to have a genuineness, ownership, or authorship that it does not possess.⁶

Observation:

An electronic transit card bent across its magnetic strip so as to obliterate the encoded data of the value remaining on the card falls within the statutory definition of a forged instrument.⁷

Federal law specifies a wide variety of documents and articles whose forgery constitutes a federal offense.⁸ For example, under these provisions, it is a federal criminal offense to use forged military passes to deceive foreign officials and airline employees,⁹ to forge or alter an obligation or other security of the United States or falsely alter a postal money order,¹⁰ and to forge a treasury check.¹¹

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Footnotes

- ¹ [State v. Cearley](#), 135 N.M. 710, 2004-NMCA-079, 92 P.3d 1284 (Ct. App. 2004).
Fact that the forgery statute applies to writings creating property rights does not mean that it applies only to such writings. [State v. Fortun](#), 323 Wis. 2d 732, 2010 WI App 32, 780 N.W.2d 238 (Ct. App. 2010), review denied, 2010 WI 110, 787 N.W.2d 845 (Wis. 2010).
- ² [F.C. v. State](#), 742 So. 2d 200 (Ala. Crim. App. 1999) (counterfeit currency); [State v. Bedoni](#), 161 Ariz. 480, 779 P.2d 355 (Ct. App. Div. 1 1989) (traffic citation); [Mayes v. State](#), 264 Ark. 283, 571 S.W.2d 420 (1978) (nonnegotiable check); [People v. Hassan](#), 168 Cal. App. 4th 1306, 86 Cal. Rptr. 3d 314 (2d Dist. 2008) (confidential marriage certificates); [People v. Cunefare](#), 102 P.3d 302 (Colo. 2004), as modified on denial of reh'g, (Dec. 20, 2004) (letter recanting assault allegations); [Gholson v. U.S.](#), 532 A.2d 118 (D.C. 1987) (time slips); [State v. Escobedo](#), 404 So. 2d 760 (Fla. Dist. Ct. App. 3d Dist. 1981) (false birth certificate); [People v. Smith](#), 259 Ill. App. 3d 492, 197 Ill. Dec. 516, 631 N.E.2d 738 (4th Dist. 1994) (bid documents); [Kindred v. State](#), 254 Ind. 127, 258 N.E.2d 411 (1970) (credit card); [State v. Edwards](#), 760 N.W.2d 209 (Iowa Ct. App. 2008) (credit card); [State v. Meyer](#), 17 Kan. App. 2d 59, 832 P.2d 357 (1992) (rental information sheet); [State v. Marler](#), 428 So. 2d 954 (La. Ct. App. 1st Cir. 1983), writ denied, 433 So. 2d 151 (La. 1983) (appearance bond); [State v. Reese](#), 283 Md. 86, 388 A.2d 122 (1978) (tax roll); [People v. Shaw](#), 27 Mich. App. 325, 183 N.W.2d 390 (1970) (credit card); [State v. Mousel](#), 371 N.W.2d 655 (Minn. Ct. App. 1985) (court documents); [State v. Wakefield](#), 682 S.W.2d 136 (Mo. Ct. App. S.D. 1984) (vehicle identification numbers); [State v. Ward](#), 1 Neb. App. 558, 510 N.W.2d 320 (1993) (institutional slip used exclusively by Corrections Department); [State v. Gledhill](#), 67 N.J. 565, 342 A.2d 161 (1975) (credit card); [State v. Sandoval](#), 142 N.M. 412, 2007-NMCA-103, 166 P.3d 473 (Ct. App. 2007) (Social Security card); [People v. Robinson](#), 53 A.D.3d 63, 860 N.Y.S.2d 159 (2d Dep't 2008), leave to appeal denied, 11 N.Y.3d 857, 872 N.Y.S.2d 80, 900 N.E.2d 563 (2008) (computer source code); [People v. Hodges](#), 246 A.D.2d 824, 667 N.Y.S.2d 812 (3d Dep't 1998) (false, homemade license plate); [State v. Hudson](#), 11 N.C. App. 712, 182 S.E.2d 198 (1971) (credit card); [State v. Brooks](#), 27 Ohio St. 2d 144, 56 Ohio Op. 2d 80, 271 N.E.2d 869 (1971) (automobile registration application); [State v. Riley](#), 24 Or. App. 665, 546 P.2d 1097 (1976) (unendorsed checks); [Com. v. Sneddon](#), 1999 PA Super 238, 738 A.2d 1026 (1999) (cash register receipts); [Ramos v. State](#), 303 S.W.3d 302 (Tex. Crim. App. 2009) (Social Security card); [State v. Tinajero](#), 154 Wash. App. 745, 228 P.3d 1282 (Div. 3 2009), review denied, 169 Wash. 2d 1011, 236 P.3d 895 (2010) (Social Security or permanent resident cards); [State v. Koch](#), 175 Wis. 2d 684, 499 N.W.2d 152 (1993) (postdated check); [Hamburg v. State](#), 820 P.2d 523 (Wyo. 1991) (nomination petition).
- ³ [State v. Reese](#), 283 Md. 86, 388 A.2d 122 (1978); [State v. Brown](#), 9 N.C. App. 498, 176 S.E.2d 881 (1970); [State v. Scoby](#), 57 Wash. App. 809, 790 P.2d 226 (Div. 3 1990), aff'd, 117 Wash. 2d 55, 810 P.2d 1358 (1991), opinion amended on other grounds, 117 Wash. 2d 55, 815 P.2d 1362 (1991); [Hamburg v. State](#), 820 P.2d 523 (Wyo. 1991).
- ⁴ [State v. Pinkham-Murch](#), 432 A.2d 1297 (Me. 1981); [State v. Morrison](#), 127 N.M. 63, 1999-NMCA-041, 976 P.2d 1015 (Ct. App. 1999); [Boyer v. State](#), 68 Okla. Crim. 220, 97 P.2d 779 (1939); [Cadd v. State](#), 587 S.W.2d 736 (Tex. Crim. App. 1979).
As to the necessity of falsity, see §§ 10 et seq.
As to the necessity that the instrument be apparently efficacious, see §§ 29, 30.
- ⁵ [People v. Cunefare](#), 102 P.3d 302 (Colo. 2004), as modified on denial of reh'g, (Dec. 20, 2004).

False forms defendant submitted to a caseworker to verify that she had completed public service imposed under a deferred sentence fell within the ambit of the forgery statute as affecting a legal right; defendant's personal liberty interest constituted a legal right that clearly was subject to termination if she failed to perform the public service that was documented in the forms submitted to the agency. [People v. Taylor](#), 159 P.3d 730 (Colo. App. 2006).

⁶ [State v. Smothers](#), 297 S.W.3d 626 (Mo. Ct. App. W.D. 2009).

⁷ [People v. Mattocks](#), 12 N.Y.3d 326, 880 N.Y.S.2d 888, 908 N.E.2d 878 (2009); [People v. McFarlane](#), 63 A.D.3d 634, 882 N.Y.S.2d 96 (1st Dep't 2009), leave to appeal denied, 13 N.Y.3d 837, 890 N.Y.S.2d 453, 918 N.E.2d 968 (2009).

⁸ 18 U.S.C.A. §§ 470 to 514.

⁹ [U.S. v. Pearce](#), 65 F.3d 22 (4th Cir. 1995).

¹⁰ [U.S. v. Singletary](#), 441 F.2d 333 (5th Cir. 1971); [U.S. v. Galardi](#), 476 F.2d 1072 (9th Cir. 1973).

¹¹ [U.S. v. Taylor](#), 869 F.2d 812 (5th Cir. 1989); [Edwards v. U.S.](#), 814 F.2d 486 (7th Cir. 1987); [U.S. v. Oliver](#), 908 F.2d 260, 30 Fed. R. Evid. Serv. 707 (8th Cir. 1990); [U.S. v. LeCoe](#), 936 F.2d 398 (9th Cir. 1991); [U.S. v. Barrett](#), 837 F.2d 933 (10th Cir. 1988).

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III. Instruments Subject to Being Forged

§ 34. Public records and documents

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  7(1)

A.L.R. Library

[What constitutes a public record or document within statute making falsification, forgery, mutilation, removal, or other misuse thereof an offense, 75 A.L.R.4th 1067](#)

Generally, records or documents required to be kept by statute are public records or documents within the purview of a statute making the forgery thereof an offense¹ as are records and documents required to be filed or recorded or necessary or convenient to the discharge of the duties of a public official.² Generally, papers not necessary or convenient to the discharge of the duties of a public official, and not expressly required by law to be filed or recorded, or prior to being so filed or recorded, are not records or documents within the purview of a statute making the forgery of such records or documents an offense.³ A statute prohibiting the forging of a public document is not limited to the alteration of an existing document originally prepared by a public official.⁴ It can also apply to an entirely fictitious document that is passed off as an official public record.⁵ Prejudice is not an element of the crime of forging a public document.⁶ However, the information contained in the document must be of such a nature that the government is required or permitted by law to act in reliance thereon or that materially affects the significant rights or duties of third parties where that effect is reasonably contemplated by the express or implied intent of the statute or regulation requiring the filing, registration, or recordation of the document.⁷

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Footnotes

¹ [People v. Parks](#), 7 Cal. App. 4th 883, 9 Cal. Rptr. 2d 450 (4th Dist. 1992) (temporary restraining order); [State v. Cataudella](#), 159 Conn. 544, 271 A.2d 99 (1970) (automobile operator's license suspension file); [Washington v. State](#), 685 So. 2d 996 (Fla. Dist. Ct. App. 5th Dist. 1997) (traffic citation); [Rodriquez v. Com.](#), 50 Va. App. 667, 653 S.E.2d 296 (2007) (summons).

- ² [Generes v. Justice Court](#), 106 Cal. App. 3d 678, 165 Cal. Rptr. 222 (3d Dist. 1980) (deed); [People v. Vesely](#), 41 Colo. App. 325, 587 P.2d 802 (App. 1978) (income tax returns); [State v. Martinez](#), 144 N.M. 50, 2008-NMCA-058, 183 P.3d 935 (Ct. App. 2008), cert. denied, 143 N.M. 682, 2008-NMCERT-003, 180 P.3d 1181 (2008) (fingerprint card).
- ³ [State v. Friedman](#), 533 So. 2d 309, 50 Ed. Law Rep. 303 (Fla. Dist. Ct. App. 1st Dist. 1988) (private academic transcript); [State v. Fleming](#), 184 Ind. 364, 111 N.E. 310 (1916); [State v. Barnholtz](#), 613 N.W.2d 218 (Iowa 2000) (vehicle damage disclosure statement and application for certificate of title); [People v. Gotthainer](#), 80 A.D.2d 922, 437 N.Y.S.2d 386 (2d Dep't 1981), order aff'd, 55 N.Y.2d 765, 447 N.Y.S.2d 246, 431 N.E.2d 971 (1981) (county resolution); [Com. v. Smith](#), 2005 PA Super 293, 883 A.2d 612 (2005) (graduate school degree and professional license); [State v. Noren](#), 621 P.2d 1224 (Utah 1980) (articles of incorporation).
- ⁴ [Reid v. Com.](#), 16 Va. App. 468, 431 S.E.2d 63 (1993).
- ⁵ [Parker v. State](#), 658 So. 2d 1105 (Fla. Dist. Ct. App. 3d Dist. 1995).
- ⁶ [Reid v. Com.](#), 16 Va. App. 468, 431 S.E.2d 63 (1993).
- ⁷ [State v. Price](#), 94 Wash. 2d 810, 620 P.2d 994 (1980).

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IV. Prosecutions

A. In General

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IV. Prosecutions

A. In General

§ 35. Generally; venue

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West's Key Number Digest

West's Key Number Digest, [Forgery](#)  23

The act of forgery ordinarily must be prosecuted in the county where it is actually committed,¹ although by statute in some states, where the circumstances show that the offense was committed partly in one county and partly in another county, venue is in either county.² Such a statute does not generally apply to the uttering of a forged instrument by mailing it from one county to another, since no part of the offense is committed in the former,³ and the county where the instrument was received, not the county in which it was mailed, is the place of the offense of uttering.⁴ Where it is not apparent that the actual forgery took place in a particular county, the proper venue may be determined from other circumstances.⁵

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- ¹ [McCoy v. State](#), 161 Ark. 658, 257 S.W. 386 (1924); [Bell v. State](#), 284 Ga. 790, 671 S.E.2d 815 (2009); [State v. Phares](#), 120 Kan. 172, 243 P. 266 (1926); [Nix v. State](#), 20 Okla. Crim. 373, 202 P. 1042, 26 A.L.R. 1053 (1922); [State v. Swank](#), 99 Or. 571, 195 P. 168 (1921); [State v. Gard](#), 2007 SD 117, 742 N.W.2d 257 (S.D. 2007).
As to presumptions and inferences of venue, see § 52.
As to venue of criminal prosecutions, generally, see [Am. Jur. 2d, Criminal Law](#) §§ 461 to 501.
- ² [People v. Gerundo](#), 112 Cal. App. 2d 863, 247 P.2d 398 (3d Dist. 1952); [Robinson v. Com.](#), 217 Ky. 129, 288 S.W. 1044 (1926); [Arnold v. State](#), 15 Okla. Crim. 519, 178 P. 897 (1919); [State v. Greene](#), 86 S.D. 177, 192 N.W.2d 712 (1971).
- ³ [State v. Swank](#), 99 Or. 571, 195 P. 168 (1921).
- ⁴ [Girdley v. State](#), 161 Tenn. 177, 29 S.W.2d 255 (1930); [Jessup v. State](#), 44 Tex. Crim. 83, 68 S.W. 988 (1902).
- ⁵ [People v. Cooper](#), 83 Cal. App. 3d 121, 147 Cal. Rptr. 705 (2d Dist. 1978) (venue was proper in the county in which the defendant had filed a complaint for breach of a forged employment contract); [Steed v. State](#), 752 So. 2d 1056

([Miss. Ct. App. 1999](#)) (venue was proper in the county named at the top of the certificate of acknowledgement on a forged deed).

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IV. Prosecutions

B. Indictments and Informations

1. In General

a. Basic Rules

§ 36. Generally; certainty

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West's Key Number Digest

West's Key Number Digest, [Forgery](#)  26

A person charged with forgery must know fully what he or she must defend against. There should be such exactness in the statement of the facts charged as constituting the offense that an acquittal or conviction can be pleaded in a subsequent prosecution for the same offense.¹ Generally, it is sufficient if the offense is charged in ordinary language and in such a manner as to enable a person of common understanding to know what is intended.² An indictment is sufficient if it puts the defendant on notice of the offense on which he or she is to be tried, even though every count is not supported by a separate affidavit,³ or the indictment miscites the statute under which the defendant is charged, so long as there is an adequate enough description of the charges that the defendant is not misled by the mistake.⁴ An indictment, which together with a bill of particulars, contains all the essential elements of the crime of criminal possession of a forged instrument in the second degree, is sufficient.⁵

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Footnotes

¹ [Meldrum v. U.S.](#), 151 F. 177 (C.C.A. 9th Cir. 1907); [People v. Whitley](#), 219 Ill. App. 3d 917, 162 Ill. Dec. 459, 579 N.E.2d 1273 (5th Dist. 1991); [State v. Miller](#), 5 Neb. App. 635, 562 N.W.2d 851 (1997) (indictment held sufficient).

² [State v. Jackson](#), 221 Mo. 478, 120 S.W. 66 (1909).

³ [McBride v. State](#), 213 Ga. App. 857, 446 S.E.2d 193 (1994).

⁴ [U.S. v. Garner](#), 529 F.2d 962 (6th Cir. 1976).

⁵ [People v. Terpolilli, 81 A.D.2d 685, 438 N.Y.S.2d 641 \(3d Dep't 1981\).](#)

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IV. Prosecutions

B. Indictments and Informations

1. In General

a. Basic Rules

§ 37. Charge in statutory language

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West's Key Number Digest

West's Key Number Digest, [Forgery](#)  26

The rule that where an indictment tracks the words of the statute charging the offense, the indictment will be held sufficient so long as the words unambiguously set forth all elements necessary to constitute the offense¹ is particularly applicable to the charge of forgery, where it is not necessary to set out the particular act by which the forgery was committed, inasmuch as the word “forge” or “forged” includes, in and of itself, a statement of the particular acts that constitute the offense.² Thus, for example, an indictment identifying and describing an instrument in narrative form and charging the defendant in the language of the statute with committing the offense of forgery is sufficient even though the forged instrument is not set out in haec verba or by facsimile copy.³ Similarly, an indictment that tracks the language of the statute in describing the mens rea necessary for forgery and uttering is sufficient.⁴ It has been stated that in a prosecution for uttering and publishing fraudulently signed United States Treasury checks with the intent to defraud the United States, an indictment tracking the statutory language and advising the defendant that on a specified date he or she published at a named bank the forged checks is sufficient.⁵

An indictment for forgery need not allege that the offense was feloniously committed unless drawn under a statute declaring it to be a felony.⁶

An indictment charging the offense of forgery in statutory language, which does not set out the manner and method in which a document was altered, changed, or defaced, is insufficient.⁷

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¹ [Am. Jur. 2d, Indictments and Informations § 103.](#)

² Harrell v. State, 79 Fla. 220, 83 So. 922 (1920); Lyman v. State, 136 Md. 40, 109 A. 548, 9 A.L.R. 401 (1920); Ex parte Porter, 827 S.W.2d 324 (Tex. Crim. App. 1992); State v. Johnson, 56 Wash. 2d 700, 355 P.2d 13 (1960).

³ People ex rel. Miller v. Pate, 42 Ill. 2d 283, 246 N.E.2d 225 (1969).

⁴ State v. Wells, 2009-Ohio-4712, 2009 WL 2894461 (Ohio Ct. App. 8th Dist. Cuyahoga County 2009).

⁵ U.S. v. McPhatter, 473 F.2d 1356 (5th Cir. 1973).

⁶ State v. Murphy, 17 R.I. 698, 24 A. 473 (1892).

⁷ State v. Cross, 5 N.C. App. 217, 167 S.E.2d 868 (1969).

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IV. Prosecutions

B. Indictments and Informations

1. In General

b. Particular Allegations

§ 38. Generally

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West's Key Number Digest

West's Key Number Digest, [Forgery](#)  26

A.L.R. Library

[Forgery: use of fictitious or assumed name](#), 49 A.L.R.2d 852

Since, in a prosecution for forgery, it is sufficient to show that the person or entity sought to be injured might have been defrauded had the forgery succeeded,¹ it is not necessary to allege in the indictment that such person or entity was actually defrauded or otherwise injured.²

Where there is no similarity of names, it is not necessary to allege that the forged instrument purports to be the act of one other than the accused.³ An indictment for forgery in the use of a fictitious name need not disclose the facts and circumstances under which the fictitious name was placed upon the paper,⁴ although explanatory allegations may be inserted as to the name forged, and, if inserted, must be proved by the state.⁵

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¹ [Nix v. State](#), 20 Okla. Crim. 373, 202 P. 1042, 26 A.L.R. 1053 (1922).

- ² U.S. v. Plyler, 222 U.S. 15, 32 S. Ct. 6, 56 L. Ed. 70 (1911); People v. Cassidy, 133 A.D.2d 374, 519 N.Y.S.2d 275 (2d Dep't 1987).
- ³ Huckaby v. State, 45 Tex. Crim. 577, 78 S.W. 942 (1904).
- ⁴ Lyman v. State, 136 Md. 40, 109 A. 548, 9 A.L.R. 401 (1920).
- ⁵ State v. Hudson, 47 Del. 387, 91 A.2d 535 (Super. Ct. 1952); Allen v. State, 44 Tex. Crim. 63, 68 S.W. 286 (1902).

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IV. Prosecutions

B. Indictments and Informations

1. In General

b. Particular Allegations

§ 39. Intent and knowledge

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  27

Generally, a forgery indictment must specify, and the State must prove, that the defendant acted with an intent to defraud,¹ and an indictment or information that fails to allege that the defendant acted with an intent to defraud is fatally defective.² Such an intent can be inferred from—

- the defendant's passing or delivering an instrument with the knowledge that the instrument was forged.³
- the forgery itself.⁴
- other circumstances surrounding the forgery or presentation.⁵

The inference is rebuttable.⁶

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Footnotes

¹ McClain v. State, 473 So. 2d 612 (Ala. Crim. App. 1985); State v. Riley, 758 S.W.2d 479 (Mo. Ct. App. S.D. 1988); State v. DeMatteo, 134 N.H. 296, 591 A.2d 1323 (1991); State v. Weigel, 194 N.J. Super. 451, 477 A.2d 372 (App. Div. 1984); People v. Hankin, 175 Misc. 2d 83, 667 N.Y.S.2d 890 (City Crim. Ct. 1997); Mason v. State, 820 S.W.2d 896 (Tex. App. Houston 1st Dist. 1991).

² State v. Smith, 742 S.W.2d 198 (Mo. Ct. App. W.D. 1986).

³ Colorado Motor Vehicle Dealer Licensing Bd. v. Northglenn Dodge, Inc., 972 P.2d 707 (Colo. App. 1998), as amended on denial of reh'g, (Jan. 14, 1999); Heard v. State, 181 Ga. App. 803, 354 S.E.2d 11 (1987); People v. Carr, 225 Ill. App. 3d 170, 167 Ill. Dec. 274, 587 N.E.2d 543 (1st Dist. 1992); State v. Cockrell, 858 S.W.2d 825 (Mo. Ct. App. E.D. 1993); State v. Weigel, 194 N.J. Super. 451, 477 A.2d 372 (App. Div. 1984); Huntley v. State, 4 S.W.3d 813 (Tex. App. Houston 1st Dist. 1999), petition for discretionary review refused, (Jan. 26, 2000).

⁴ State v. Pride, 1 S.W.3d 494 (Mo. Ct. App. W.D. 1999).

⁵ People v. Gray, 710 P.2d 1149 (Colo. App. 1985); People v. Carr, 225 Ill. App. 3d 170, 167 Ill. Dec. 274, 587 N.E.2d 543 (1st Dist. 1992); Miller v. State, 693 N.E.2d 602 (Ind. Ct. App. 1998); State v. Ford, 473 So. 2d 931 (La. Ct. App. 3d Cir. 1985), writ denied, 477 So. 2d 1123 (La. 1985); State v. Johnson, 855 S.W.2d 470 (Mo. Ct. App. W.D. 1993); Diggs v. State, 928 S.W.2d 756 (Tex. App. Houston 14th Dist. 1996), petition for discretionary review granted, (Apr. 23, 1997), review dismissed with per curiam opinion, 963 S.W.2d 78 (Tex. Crim. App. 1998).

⁶ State v. Shannon, 795 S.W.2d 426 (Mo. Ct. App. E.D. 1990); Fitzgerald v. Com., 227 Va. 171, 313 S.E.2d 394 (1984). As to the question of intent as one for the jury, see § 62.

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IV. Prosecutions

B. Indictments and Informations

1. In General

b. Particular Allegations

§ 40. Intent and knowledge—Persons intended to be defrauded

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  27

At common law, it was necessary in an indictment for forgery, or for uttering a forged instrument, to allege the name of the particular person intended to be defrauded by the forgery or uttering¹ or that the name of the person was unknown.² However, in most jurisdictions, statutes now require the prosecution to allege only a general intent to defraud, not the name of the particular person intended to be defrauded.³

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Footnotes

¹ Goodson v. State, 29 Fla. 511, 10 So. 738 (1892); Commonwealth v. Spilman, 124 Mass. 327, 1878 WL 10819 (1878); State v. Murphy, 17 R.I. 698, 24 A. 473 (1892).

² State v. Hudson, 47 Del. 387, 91 A.2d 535 (Super. Ct. 1952).

³ Read v. U.S., 299 F. 918 (App. D.C. 1924); Snow v. State, 85 Ark. 203, 107 S.W. 980 (1908); Kindred v. State, 524 N.E.2d 279 (Ind. 1988); State v. Weaver, 149 Iowa 403, 128 N.W. 559 (1910); Sherman v. State, 359 So. 2d 1366 (Miss. 1978); State v. DeMatteo, 134 N.H. 296, 591 A.2d 1323 (1991); Snider v. State, 71 Okla. Crim. 98, 108 P.2d 552 (1940); Teamer v. State, 557 S.W.2d 110 (Tex. Crim. App. 1977).

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B. Indictments and Informations

1. In General

b. Particular Allegations

§ 41. Persons to whom instruments are offered or passed

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  26

In some jurisdictions, it is necessary to allege in an indictment for uttering a forged instrument the name of the person to whom the instrument was offered or passed¹ or that the name of such person is not known.² Many jurisdictions, however, construe the phrase “intended to be defrauded,” as used in statutes that dispense with the necessity of alleging the name of the person intended to be defrauded, as applying to the person to whom the paper was offered or passed as well as to the person whose name was forged.³ These jurisdictions hold that such an allegation in the indictment is unnecessary.⁴

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Footnotes

¹ [Marino v. State](#), 171 Md. 104, 187 A. 858 (1936); [Fleming v. State](#), 114 Tex. Crim. 505, 26 S.W.2d 258 (1930).

² [State v. Murphy](#), 17 R.I. 698, 24 A. 473 (1892).

³ [State v. Weaver](#), 149 Iowa 403, 128 N.W. 559 (1910); [People v. Dolan](#), 186 N.Y. 4, 78 N.E. 569 (1906).

⁴ [State v. Weaver](#), 149 Iowa 403, 128 N.W. 559 (1910); [Burns v. State](#), 72 Okla. Crim. 409, 117 P.2d 144 (1941).

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b. Particular Allegations

§ 42. Alteration

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  30

Where the alteration of a genuine instrument is charged, an indictment for forgery must clearly set forth the alteration alleged.¹ The indictment must also contain allegations showing alteration of a material part of the instrument.²

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Footnotes

¹ [State v. Mitten](#), 36 Mont. 376, 92 P. 969 (1907); [Pylant v. State](#), 154 Tex. Crim. 29, 224 S.W.2d 716 (1949).

² [State v. McNaspy](#), 58 Kan. 691, 50 P. 895 (1897); [State v. Riebe](#), 27 Minn. 315, 7 N.W. 262 (1880).

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1. In General

b. Particular Allegations

§ 43. Efficacy and effect of instruments

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  29(1), 29(2)

The indictment for forgery must show that the instrument in question could have been made available to work the intended fraud or injury.¹ If the instrument on its face shows its legal efficacy, it is not necessary to allege any extrinsic matter to give it additional force and effect.² If it does not, the extrinsic facts supporting the claim that the instrument was available for the fraudulent purpose alleged in the indictment must be alleged.³

If the indictment merely sets out an instrument that is a nullity on its face, without any allegation showing how it could have been made to act injuriously or fraudulently by reason of independent matter, no case is made.⁴ The same is true when the instrument is imperfect and incomplete, and its real meaning and terms are not intelligible from its words and figures, but must be derived from extrinsic facts, with its capacity to injure dependent upon such facts.⁵

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Footnotes

¹ [Hepburn v. Chapman](#), 109 Fla. 133, 149 So. 196 (1933); [State v. Ward](#), 482 So. 2d 182 (La. Ct. App. 4th Cir. 1986); [State v. Jackson](#), 221 Mo. 478, 120 S.W. 66 (1909).

² [State v. Jackson](#), 221 Mo. 478, 120 S.W. 66 (1909); [Gordon v. Com.](#), 100 Va. 825, 41 S.E. 746 (1902).

³ [Gooch v. State](#), 249 Ala. 477, 31 So. 2d 776, 174 A.L.R. 1297 (1947); [People v. Smith](#), 259 Ill. App. 3d 492, 197 Ill. Dec. 516, 631 N.E.2d 738 (4th Dist. 1994); [State v. Cordray](#), 200 Mo. 29, 98 S.W. 1 (1906); [Huckaby v. State](#), 45 Tex. Crim. 577, 78 S.W. 942 (1904); [Gordon v. Com.](#), 100 Va. 825, 41 S.E. 746 (1902).

⁴ State v. Evans, 15 Mont. 539, 39 P. 850 (1895).

⁵ Rembert v. State, 53 Ala. 467, 1875 WL 1184 (1875); King v. State, 27 Tex. App. 567, 11 S.W. 525 (Ct. App. 1889).

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1. In General

b. Particular Allegations

§ 44. Instrument forged

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  29(1), 29(2)

Every indictment for forgery, or other crime whose essence consists of the publication or fabrication of a written instrument, is required in some jurisdictions, on its face, to set out the instrument according to its tenor, except where the instrument is in the possession of the accused, destroyed, or for some other reason not accessible to the grand jury, in which case the excuse for not setting it out must be distinctly alleged.¹

In many jurisdictions, it is sufficient to state the purport of the forged instrument, without setting out the writing according to its tenor² or describing the instrument alleged to have been forged.³ However, even the absence of a description of an allegedly forged document is not fatal to an information charging forgery where the common-law name of the offense is used and the statutory provision is cited.⁴ An indictment is also sufficient if it incorporates the forged document by reference rather than describing or setting forth the tenor of the instrument.⁵ Even an incomplete description can be adequate.⁶ Where the indictment sets out the instrument according to both its purport and its tenor, however, the descriptions must be consistent.⁷

It is not necessary to set out marks, ornaments, or marginal figures that form no part of the contract since they are not part of the forged instrument.⁸ Nor is it necessary to state any other matter written on the instrument if it does not constitute part of the instrument itself and does not enter into it as an essential description of the instrument.⁹ Thus, an endorsement on a bill or note which is deemed not to be part of the instrument need not be set out in an indictment alleging a forgery of the instrument.¹⁰

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Footnotes

¹ [People v. Tilden](#), 242 Ill. 536, 90 N.E. 218 (1909); [Martinez v. State](#), 742 S.W.2d 687 (Tex. Crim. App. 1987).

- ² People v. Rennels, 227 Ill. App. 3d 263, 169 Ill. Dec. 250, 591 N.E.2d 130 (5th Dist. 1992).
- ³ Pannell v. State, 707 S.W.2d 692 (Tex. App. Texarkana 1986); State v. Brown, 153 Wash. App. 1034, 2009 WL 4798850 (Div. 3 2009).
- ⁴ State v. Sianez, 103 Ariz. 616, 447 P.2d 874 (1968).
- ⁵ U.S. v. Romero, 495 F.2d 1356 (5th Cir. 1974); Driver v. U.S., 521 A.2d 254 (D.C. 1987).
- ⁶ Brooks v. State, 456 So. 2d 1142 (Ala. Crim. App. 1984) (indictment used word “withdrawal,” instead of phrase, “withdrawal slip”).
- ⁷ People v. Addison, 75 Ill. App. 2d 358, 220 N.E.2d 511 (4th Dist. 1966).
- ⁸ Carberry v. State, 701 S.W.2d 255 (Tex. Crim. App. 1985).
- ⁹ Haupt v. State, 108 Ga. 53, 34 S.E. 313 (1899); Perkins v. Commonwealth, 48 Va. 651, 7 Gratt. 651, 1851 WL 2670 (1851).
- ¹⁰ Brown v. State, 30 Ala. App. 339, 7 So. 2d 24 (1941); McCoy v. State, 161 Ark. 658, 257 S.W. 386 (1924); Beer v. State, 42 Tex. Crim. 505, 60 S.W. 962 (1901).

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2. Joinder

§ 45. Of offenses; duplicity

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West's Key Number Digest

West's Key Number Digest, [Forgery](#)  26, 32

The propriety of joining charges of forgery and uttering depends upon the extent to which the two crimes are regarded under the statutes as identical.¹ Although it has been held that they cannot be joined in the same count, or even in the same indictment,² generally, an information in two counts, one charging forgery in making an instrument, and the other charging forgery in uttering it, is not subject to demurrer on the ground that it charges two offenses.³ Thus, when each of the acts charged is connected with the same instrument, an indictment alleging the same in separate counts, the first by falsely making and forging, the second by falsely uttering and publishing, is not subject to demurrer for duplicity, as only one offense is charged, that is, the crime of forging as to one and the same instrument.⁴

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Footnotes

¹ [Hamilton v. State](#), 53 Okla. Crim. 281, 10 P.2d 734 (1932); [State v. Green](#), 89 Utah 437, 57 P.2d 750 (1936).
As to what constitutes uttering, see §§ 24 et seq.

² [Messer v. Com.](#), 26 Ky. L. Rptr. 40, 80 S.W. 489 (Ky. 1904).

³ [U.S. v. Carpenter](#), 151 F. 214 (C.C.A. 9th Cir. 1907); [State v. Maxwell](#), 151 Kan. 951, 102 P.2d 109, 128 A.L.R. 1315 (1940); [State v. Phillips](#), 127 Mont. 381, 264 P.2d 1009 (1953).

⁴ [State v. Mitton](#), 37 Mont. 366, 96 P. 926 (1908); [Bateman v. Com.](#), 205 Va. 595, 139 S.E.2d 102 (1964).

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B. Indictments and Informations

2. Joinder

§ 46. Of defendants

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  26

In accordance with the general rule permitting the charging of two or more defendants who are alleged to have participated in the same act or transaction or in the same series of acts or transactions in a joint indictment,¹ several persons may be joined in the same indictment for having forged or counterfeit bank notes in their possession for the purpose of sale or uttering.²

Thus, indictments may state charges of procuring or aiding and abetting a forgery against one who—

- procures an accomplice to sign his or her name on a paternity blood test consent form.³
- intercepts an unemployment benefits form and has his or her spouse complete the form and forge the signature of a government agent.⁴
- causes false book entries to be made through directing his or her employees to make the entries.⁵
- arranges for someone else to sign his or her spouse's name.⁶
- plays a knowing role in the commission of the offense even in the absence of active participation or overt acts.⁷

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¹ [Am. Jur. 2d, Indictments and Informations § 196.](#)

² [U.S. v. Romero, 495 F.2d 1356 \(5th Cir. 1974\).](#)

³ [State v. Daigle, 681 So. 2d 66 \(La. Ct. App. 1st Cir. 1996\).](#)

⁴ [People v. Selim, 227 A.D.2d 917, 644 N.Y.S.2d 448 \(4th Dep't 1996\).](#)

⁵ [State v. Mollicone, 654 A.2d 311 \(R.I. 1995\).](#)

⁶ State v. Kelly, 183 W. Va. 509, 396 S.E.2d 471 (1990).

⁷ Jenkins v. State, 217 Ga. App. 655, 458 S.E.2d 497 (1995); Com. v. Caswell, 614 S.W.2d 253 (Ky. Ct. App. 1981); State v. Williams, 415 N.W.2d 760 (Minn. Ct. App. 1987); Ramsey v. Com., 2 Va. App. 265, 343 S.E.2d 465 (1986).

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C. Variance

§ 47. Generally

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West's Key Number Digest

West's Key Number Digest, [Forgery](#)  34(1) to 34(9)

A variance in substance between the allegations of the indictment for forgery and the proof tendered in support thereof is fatal.¹

In considering the instrument itself, a slight variance between the instrument as set out in the indictment and that tendered in evidence generally is of no consequence.² Thus, differences consisting of abbreviations, misspellings, and the improper use of numerals are generally immaterial.³ Similarly, there is no material variance between—

- the size of the photocopy of an instrument attached to the indictment and the actual instrument introduced at trial.⁴
- an indictment charging the uttering of a completed note and proof that the note was filled in, at the direction and in the presence of the defendant, by the person to whom it was uttered.⁵

Furthermore, a variance is not fatal where—

- a mortgage alleged to have been forged does not, as set out in the indictment, contain a copy of the certificate of acknowledgment affixed thereto.⁶
- the names charged and proved come within the rule of *idem sonans*.⁷
- an order is not only alleged to be drawn on the president and directors of a bank but is also fully set out in the indictment and proven to be an order on the bank itself.⁸

Observation:

Whether the omission from a forgery indictment of some part of the allegedly forged instrument constitutes a fatal variance turns on the materiality of the omitted portion.⁹

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- ¹ [People v. Nickols](#), 391 Ill. 565, 63 N.E.2d 759 (1945); [State v. Smith](#), 80 Ohio L. Abs. 321, 159 N.E.2d 248 (Ct. App. 7th Dist. Columbiana County 1958).
- ² [State v. Jackson](#), 221 Mo. 478, 120 S.W. 66 (1909); [Carberry v. State](#), 701 S.W.2d 255 (Tex. Crim. App. 1985).
- ³ [Bullard v. State](#), 40 Ala. App. 641, 120 So. 2d 580 (1960); [Bradley v. State](#), 206 So. 2d 657 (Fla. Dist. Ct. App. 2d Dist. 1968); [State v. Mollicone](#), 654 A.2d 311 (R.I. 1995).
- ⁴ [McClellan v. State](#), 701 S.W.2d 671 (Tex. App. Austin 1985), petition for discretionary review granted, (Jan. 28, 1987) and judgment aff'd, 742 S.W.2d 655 (Tex. Crim. App. 1987).
- ⁵ [People v. Gorham](#), 9 Cal. App. 341, 99 P. 391 (2d Dist. 1908); [Bullock v. Com.](#), 205 Va. 558, 138 S.E.2d 261 (1964).
- ⁶ [People v. Baker](#), 100 Cal. 188, 34 P. 649 (1893).
- ⁷ [Santolini v. State](#), 6 Wyo. 110, 42 P. 746 (1895).
- ⁸ [State v. Morton](#), 27 Vt. 310, 1 Williams 310, 1855 WL 2488 (1855).
- ⁹ [Watson v. State](#), 718 S.W.2d 892 (Tex. App. Beaumont 1986), petition for discretionary review refused, (Jan. 6, 1988).

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C. Variance

§ 48. Between allegations and evidence produced

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West's Key Number Digest

West's Key Number Digest, [Forgery](#)  34(1) to 34(9)

Variances between allegations of the complaint and the evidence at trial rarely have been found to be fatal. For example, an information naming banks as the victims of an alleged forgery and the State's failure to prove at trial the existence of any victim is not a fatal variance, where the defense rests on the theory that the defendant was not the perpetrator of the crime and had no intent to defraud anyone;¹ nor is it a fatal defect where an indictment charges the forgery of a specific number of checks, while the evidence presented at trial showed direct alteration of fewer than that specific number.² Additionally, a variance between an indictment charging that forged checks were drawn on a third party's account, when the evidence presented at trial showed that they were actually drawn on the defendant's account, is not fatal where there is proof that the defendant cashed the checks purporting to be drawn on another's account.³ It also is not a fatal variance for the State to be unable to prove at trial the exact date on which the offense occurred, even though the indictment charged that the crimes were committed on a specific date, because time is not of the essence in the crime of forgery and uttering a forged check.⁴

Conflicting authority exists as to whether an allegation in the indictment that the defendant forged an instrument will support a conviction where the evidence shows that he or she forged only an endorsement on an otherwise genuine instrument. Some courts hold that it will not,⁵ while others state that the forgery statutes are broad enough to cover both forged writings and forged endorsements, and that there is no need for separate averments in the indictments.⁶ However, evidence that the defendant forged an endorsement on the reverse side of a check is insufficient to sustain a conviction under an indictment charging the defendant with the forgery of an item appearing on the face of the check.⁷

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Footnotes

¹ [State v. Markarian, 551 A.2d 1178 \(R.I. 1988\).](#)

² [U.S. v. Morgenstern, 933 F.2d 1108 \(2d Cir. 1991\)](#) (forgery of 13 checks charged, direct alteration of only 10 proved).

³ [McBride v. State](#), 202 Ga. App. 556, 415 S.E.2d 13 (1992).

⁴ [State v. Prince](#), 49 N.C. App. 145, 270 S.E.2d 521 (1980) (noting that the defendant did not demonstrate prejudice by the absence of proof of the exact date).

⁵ [Brown v. State](#), 30 Ala. App. 339, 7 So. 2d 24 (1941).

⁶ [Gaily v. State](#), 181 Ga. App. 906, 354 S.E.2d 442 (1987) (holding that any variance caused by the State's failure to prove that the forged checks were signed by the person whose name appeared on the checks was not fatal); [Maycock v. State](#), 801 S.W.2d 567 (Tex. App. Dallas 1990).

⁷ [Rochelle v. State](#), 737 S.W.2d 843 (Tex. App. Dallas 1987), petition for discretionary review granted, (Mar. 1, 1989) and judgment aff'd, 791 S.W.2d 121 (Tex. Crim. App. 1990).

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D. Defenses

§ 49. Generally

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West's Key Number Digest

West's Key Number Digest, [Forgery](#)  20

The lack of an element essential to constitute the offense of forgery may be shown as a defense in a prosecution alleging the commission of the crime.¹ Thus, the fact that the defendant had, or in good faith believed he or she had, authority to make the instrument can constitute a good defense in a prosecution for forgery.² However, an assertion that the defendant had the authority to make or sign the document is not a defense where the defendant in fact did not have the authority, and other circumstances indicate that the defendant knew he or she did not have such authority.³ The fact that a check should not have been cashed in its altered form is not a defense.⁴

It is not a proper defense that the person committing the forgery was or considered himself or herself justly entitled to what he or she would obtain thereby.⁵ Likewise, it is no defense that the act was done under the instructions or orders of another or in partnership or cooperation with another person.⁶ In addition, the fact that one who forges a receipt in full on a payment on account has in fact paid the indebtedness in full will not prevent his or her guilt of forgery.⁷ There is conflicting authority on whether it is a defense to forgery that the forged check was either void or was given in consideration for an illegal transaction.⁸

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Footnotes

¹ [Smith v. Com.](#), 282 S.W.2d 618 (Ky. 1955).

As to the elements, generally, necessary to constitute forgery, see §§ 5 to 8.

² [Hosier v. State](#), 1 P.3d 107 (Alaska Ct. App. 2000); [Mississippi Gaming Com'n v. Baker](#), 755 So. 2d 1129 (Miss. Ct. App. 1999); [State v. Lee-Grigg](#), 387 S.C. 310, 692 S.E.2d 895 (2010).

³ [U.S. v. Jaynes](#), 75 F.3d 1493 (10th Cir. 1996); [State v. Gonzalez](#), 822 P.2d 1214 (Utah Ct. App. 1991); [State v. Soderholm](#), 68 Wash. App. 363, 842 P.2d 1039 (Div. 1 1993); [State v. Kelly](#), 183 W. Va. 509, 396 S.E.2d 471 (1990).

- ⁴ [Beiler v. Com.](#), 243 Va. 291, 415 S.E.2d 849, 17 U.C.C. Rep. Serv. 2d 1198 (1992).
- ⁵ [State v. Lee-Grigg](#), 374 S.C. 388, 649 S.E.2d 41 (Ct. App. 2007), cert. granted, (Sept. 18, 2008) and decision aff'd, 387 S.C. 310, 692 S.E.2d 895 (2010).
- ⁶ [State v. Lee-Grigg](#), 374 S.C. 388, 649 S.E.2d 41 (Ct. App. 2007), cert. granted, (Sept. 18, 2008) and decision aff'd, 387 S.C. 310, 692 S.E.2d 895 (2010).
- ⁷ [Gordon v. Com.](#), 100 Va. 825, 41 S.E. 746 (1902).
- ⁸ [Williams v. State](#), 333 So. 2d 613 (Ala. 1976) (defense allowed); [Burks v. State](#), 795 S.W.2d 913 (Tex. App. Amarillo 1990), petition for discretionary review refused, (Feb. 20, 1991) (defense not allowed).

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IV. Prosecutions

D. Defenses

§ 50. Former jeopardy

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  20

Where res judicata is proffered as a defense, it must be shown that the elements of the crime for which the defendant was previously acquitted were the same as those of the crime with which the defendant is charged.¹ If the offenses charged are perfectly distinct in point of law, however nearly they may be connected in fact, the plea will be bad.² As to several acts of forgery, each generally constitutes a separate crime, even though they are committed in the course of a continuous transaction, on the same date, or even on the same piece of paper,³ unless each act constitutes merely one of a series related to an indivisible instrument.⁴ Several prosecutions cannot be maintained for forging the names of several different persons to one note.⁵ Similarly, uttering is usually deemed to constitute a single crime, regardless of the number of instruments involved;⁶ the same is held as to the offense of possession of forged instruments.⁷ In the absence of a statute to the contrary, forgery of an instrument and its uttering are distinct offenses within the rule of former jeopardy so that an acquittal of a charge of forgery is not a bar to a prosecution for the uttering and passing of the instrument that was forged.⁸ This rule is subject, however, to statutory provisions assimilating the two crimes.⁹

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Footnotes

¹ U.S. v. Indelicato, 611 F.2d 376 (1st Cir. 1979).

² Spears v. People, 220 Ill. 72, 77 N.E. 112 (1906); State v. Finney, 139 Kan. 578, 32 P.2d 517 (1934).

³ Barton v. State, 23 Wis. 587, 1869 WL 2049 (1869).

⁴ § 45.

⁵ State v. Coffman, 149 Tenn. 525, 261 S.W. 678, 33 A.L.R. 559 (1924).

⁶ State v. Eggesht, 41 Iowa 574, 1875 WL 490 (1875); State v. Moore, 86 Minn. 422, 90 N.W. 787 (1902).

⁷ State v. Benham, 7 Conn. 414, 1829 WL 49 (1829).

⁸ U.S. v. Smith, 470 F.2d 1299 (5th Cir. 1973); State v. DeGina, 42 N.C. App. 156, 256 S.E.2d 275 (1979).

⁹ § 24.

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Research References

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[Alteration of Instruments](#), 29 Am. Jur. Proof of Facts 3d 549

[Identification of Handprinting and Numerals](#), 24 Am. Jur. Proof of Facts 3d 667

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36 Am. Jur. 2d Forgery § 51

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IV. Prosecutions

E. Evidence

1. Presumptions and Inferences; Burden of Proof

§ 51. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  35

To sustain a charge of forgery, it is not necessary to prove the defendant's execution of the false instrument.¹ The unexplained fact that the defendant had possession of the forged instrument, knowing its character and intending to pass it, is sufficient in some jurisdictions to justify an inference that he or she forged it,² or to constitute prima facie evidence that the defendant forged it, which, while it does not compel a finding that he or she did the forging and may be rebutted by an explanation satisfactory to the jury of how he or she came into possession of the instrument, will warrant the submission of that issue to the jury and will sustain a finding that the defendant did the forging.³ In other jurisdictions, such possession by the defendant raises a presumption that, if unexplained, becomes conclusive.⁴ In still other jurisdictions, however, the mere possession or presentation of an instrument is not sufficient to impute the defendant with the knowledge that the document was forged.⁵ The element of forgery that requires the prosecution to prove that the defendant lacked the authority to sign the alleged forged instrument may also be inferred from the evidence.⁶

In a prosecution for uttering, as in the case of forging an instrument, the unexplained possession of a forged instrument that the defendant utters or offers to utter gives rise to an inference that he or she either forged the instrument or knew it to be forged,⁷ or to a presumption that the defendant knew of the forgery, which presumption becomes conclusive in the absence of a reasonable explanation.⁸ In other jurisdictions, however, the act of possessing a forged instrument and attempting to utter it, standing alone, does not give rise to an inference of guilty knowledge, but a person who utters a forged instrument can be inferred to have had knowledge of the forgery.⁹

The mere negotiation or utterance of a forged instrument cannot, of itself, establish a presumption that defendant had knowledge of the forged nature of the instrument as required for conviction for criminal possession of a forged instrument.¹⁰

A defendant's due process rights are not violated by the use of a presumption that the person possessing and attempting to pass a forged instrument had knowledge of its falsity, where a jury instruction does not create a mandatory presumption of knowledge that the instrument was forged, and substantial evidence supports an inference that the defendant knew the

instrument was forged.¹¹

CUMULATIVE SUPPLEMENT

Cases:

Mere possession of forged identification cards does not support an inference of an intent to injure or defraud. [West's RCWA 9A.60.020\(1\)\(b\)](#), [10.58.040](#). [State v. Vasquez](#), 309 P.3d 318 (Wash. 2013).

[END OF SUPPLEMENT]

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Footnotes

- ¹ [State v. Johnson](#), 189 Kan. 571, 370 P.2d 107 (1962).
- ² [Bedford v. State](#), 96 Ark. App. 38, 237 S.W.3d 516 (2006); [State v. Booton](#), 85 Idaho 51, 375 P.2d 536 (1962); [State v. Johnson](#), 189 Kan. 571, 370 P.2d 107 (1962); [State v. Scurlock](#), 998 S.W.2d 578 (Mo. Ct. App. W.D. 1999); [State v. Phillips](#), 127 Mont. 381, 264 P.2d 1009 (1953); [State v. Weigel](#), 194 N.J. Super. 451, 477 A.2d 372 (App. Div. 1984); [State v. Seraphem](#), 90 N.C. App. 368, 368 S.E.2d 643 (1988).
- ³ [Fitzgerald v. Com.](#), 227 Va. 171, 313 S.E.2d 394 (1984); [State v. Woods](#), 157 W. Va. 947, 206 S.E.2d 509 (1974).
- ⁴ [Smith v. Com.](#), 307 S.W.2d 201 (Ky. 1957); [State v. Taylor](#), 778 S.W.2d 276 (Mo. Ct. App. W.D. 1989); [Wofford v. State](#), 210 Tenn. 267, 358 S.W.2d 302 (1962).
- ⁵ [People v. Mathis](#), 218 A.D.2d 817, 630 N.Y.S.2d 793 (2d Dep't 1995).
- ⁶ [Estes v. State](#), 169 Ga. App. 685, 314 S.E.2d 700 (1984).
- ⁷ [Tarwater v. State](#), 209 Ark. 687, 192 S.W.2d 133 (1946); [State v. Maxwell](#), 151 Kan. 951, 102 P.2d 109, 128 A.L.R. 1315 (1940); [State v. Phillips](#), 127 Mont. 381, 264 P.2d 1009 (1953); [Palmer v. State](#), 735 S.W.2d 696 (Tex. App. Fort Worth 1987); [Walker v. Com.](#), 25 Va. App. 50, 486 S.E.2d 126 (1997).
- ⁸ [Hatton v. Commonwealth](#), 294 Ky. 740, 172 S.W.2d 564 (1943); [McGhee v. State](#), 183 Tenn. 20, 189 S.W.2d 826, 164 A.L.R. 617 (1945).
- ⁹ [State v. Allegra](#), 129 N.H. 720, 533 A.2d 338 (1987); [State v. Kihlstrom](#), 1999 UT App 289, 988 P.2d 949 (Utah Ct. App. 1999).
- ¹⁰ [People v. Moore](#), 41 A.D.3d 1202, 837 N.Y.S.2d 484 (4th Dep't 2007).
- ¹¹ [State v. Taylor](#), 778 S.W.2d 276 (Mo. Ct. App. W.D. 1989); [State v. DeGina](#), 42 N.C. App. 156, 256 S.E.2d 275 (1979).

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E. Evidence

1. Presumptions and Inferences; Burden of Proof

§ 52. As to place where forgery was committed

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  35

Because a forger generally does not ply his or her trade in the open and eyewitnesses to the forgery are therefore rare, venue may be established by proof of the facts and circumstances introduced in evidence from which venue may be fairly and reasonably inferred.¹ Consequently, where there is evidence that a forged instrument was uttered in a given county, such evidence warrants either a presumption² or an inference,³ or constitutes prima facie evidence,⁴ that the forging was done in that county.

CUMULATIVE SUPPLEMENT

Cases:

Evidence of e-mail exchanges between defendant and lender's attorney evincing defendant's knowledge that the original documents related to a deed on defendant's hotel, which was located in Lawrence County, would need to be filed in Lawrence County, settlement statement providing that payments were to be made in Lawrence County, and owner's affidavit indicating that it would be mailed to Lawrence Title Company was sufficient that venue was proper in Lawrence County in prosecution for forgery and offering false or forged instruments for filing, registering, or recording in a public office. Const. Art. 6, § 7; [SDCL § 23A-16-3](#). [State v. Thomason, 2015 SD 90, 2015 WL 7294775 \(S.D. 2015\)](#).

[END OF SUPPLEMENT]

Footnotes

- ¹ State v. Johnson, 189 Kan. 571, 370 P.2d 107 (1962); State v. Lindsey, 2 Or. App. 503, 468 P.2d 897 (1970).
- ² McGhee v. State, 214 Ark. 221, 215 S.W.2d 135 (1948); State v. Wardenburg, 261 Iowa 1395, 158 N.W.2d 147 (1968); State v. Johnson, 189 Kan. 571, 370 P.2d 107 (1962); State v. Douglas, 312 Mo. 373, 278 S.W. 1016 (1925); State v. Forbes, 75 N.H. 306, 73 A. 929 (1909).
- ³ State v. Tingler, 32 W. Va. 546, 9 S.E. 935 (1889).
- ⁴ State v. Forbes, 75 N.H. 306, 73 A. 929 (1909); Nix v. State, 20 Okla. Crim. 373, 202 P. 1042, 26 A.L.R. 1053 (1922).

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E. Evidence

1. Presumptions and Inferences; Burden of Proof

§ 53. As to intent to defraud

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  35

A.L.R. Library

[Evidence of Intent to Defraud in State Forgery Prosecution](#), 108 A.L.R.5th 593

The defendant's intent to defraud, which is an essential element of the offenses of forgery and of uttering a forged instrument,¹ need not be proven by positive and direct evidence.² The circumstances surrounding the particular transaction may give rise to a presumption³ or inference of the defendant's intent.⁴ Included in the circumstances from which intent may be inferred is the defendant's knowledge that the instrument was false or forged,⁵ possession of the forged instrument,⁶ as well as the act of forgery itself,⁷ or the use of deception by the person passing the instrument.⁸ Some authority holds that knowingly passing as genuine a forged instrument is conclusive of the intent to defraud if not explained to the jury's satisfaction.⁹ Thus, from the fact of uttering and passing the instrument itself, and from the receipt of the proceeds of the instrument, the jury can properly find the specific intent to defraud.¹⁰

The inference of intent is rebuttable through evidence explaining the defendant's possession of the forged instrument to the satisfaction of the trier of fact.¹¹

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Footnotes

¹ §§ 24, 31.

- ² State v. Booton, 85 Idaho 51, 375 P.2d 536 (1962).
- ³ People v. White, 804 P.2d 247 (Colo. App. 1990); People v. Carr, 225 Ill. App. 3d 170, 167 Ill. Dec. 274, 587 N.E.2d 543 (1st Dist. 1992); Snider v. State, 71 Okla. Crim. 98, 108 P.2d 552 (1940); Diggs v. State, 928 S.W.2d 756 (Tex. App. Houston 14th Dist. 1996), petition for discretionary review granted, (Apr. 23, 1997) and review dismissed with per curiam opinion, 963 S.W.2d 78 (Tex. Crim. App. 1998).
- ⁴ State v. Thompson, 194 Ariz. 295, 981 P.2d 595, 108 A.L.R.5th 859 (Ct. App. Div. 1 1999); Jenkins v. State, 217 Ga. App. 655, 458 S.E.2d 497 (1995); State v. Booton, 85 Idaho 51, 375 P.2d 536 (1962); People v. Whitley, 219 Ill. App. 3d 917, 162 Ill. Dec. 459, 579 N.E.2d 1273 (5th Dist. 1991); State v. Franklin, 956 So. 2d 823 (La. Ct. App. 2d Cir. 2007), amended on reh'g, (June 14, 2007) and writ denied, 972 So. 2d 1162 (La. 2008); State v. Demry, 260 Minn. 173, 109 N.W.2d 587 (1961); State v. Hudson, 793 S.W.2d 872 (Mo. Ct. App. E.D. 1990); State v. Weigel, 194 N.J. Super. 451, 477 A.2d 372 (App. Div. 1984); Snider v. State, 71 Okla. Crim. 98, 108 P.2d 552 (1940); State v. Lee-Grigg, 374 S.C. 388, 649 S.E.2d 41 (Ct. App. 2007), cert. granted, (Sept. 18, 2008) and decision aff'd, 387 S.C. 310, 692 S.E.2d 895 (2010); Oldham v. State, 5 S.W.3d 840 (Tex. App. Houston 14th Dist. 1999), petition for discretionary review refused, (Feb. 16, 2000).
- ⁵ People v. Liggett, 114 P.3d 85 (Colo. App. 2005), judgment aff'd, 135 P.3d 725 (Colo. 2006); State v. Cockrell, 858 S.W.2d 825 (Mo. Ct. App. E.D. 1993); Huntley v. State, 4 S.W.3d 813 (Tex. App. Houston 1st Dist. 1999), petition for discretionary review refused, (Jan. 26, 2000).
- ⁶ People v. Rodriguez, 71 A.D.3d 450, 897 N.Y.S.2d 42 (1st Dep't 2010), leave to appeal granted, 15 N.Y.3d 777, 933 N.E.2d 1059 (2010).
- ⁷ State v. Pride, 1 S.W.3d 494 (Mo. Ct. App. W.D. 1999); State v. Gonzalez, 822 P.2d 1214 (Utah Ct. App. 1991).
- ⁸ Choice v. State, 883 S.W.2d 325 (Tex. App. Tyler 1994).
- ⁹ Matula v. State, 264 Ga. 673, 449 S.E.2d 850 (1994); State v. Pride, 1 S.W.3d 494 (Mo. Ct. App. W.D. 1999).
- ¹⁰ Heard v. State, 181 Ga. App. 803, 354 S.E.2d 11 (1987); State v. Booton, 85 Idaho 51, 375 P.2d 536 (1962); State v. Shannon, 795 S.W.2d 426 (Mo. Ct. App. E.D. 1990).
- ¹¹ State v. Cockrell, 858 S.W.2d 825 (Mo. Ct. App. E.D. 1993).

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E. Evidence

1. Presumptions and Inferences; Burden of Proof

§ 54. Burden of proof

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  35

The prosecution must prove the commission of the crime beyond a reasonable doubt.¹

The testimony of an officer of a drawee bank that the drawer has no account with the bank and is unknown to the bank is prima facie evidence that the drawer is a fictitious person.² The State need not prove beyond a reasonable doubt that there was no such person.³ However, the State should at least show that an unsuccessful search was made in an effort to locate the person.⁴ When the name affixed to the instrument is fictitious, the State also need not prove that the person who signed the instrument lacked the authority to do so because such authority could not have been given.⁵ However, if the person whose name was signed to the document is real, the State may be required to prove that the signer was not in fact authorized to sign that party's name.⁶

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Footnotes

¹ [Velasquez v. State](#), 276 Ga. App. 527, 623 S.E.2d 721 (2005) (intent to defraud must be proven beyond a reasonable doubt); [People v. Carr](#), 225 Ill. App. 3d 170, 167 Ill. Dec. 274, 587 N.E.2d 543 (1st Dist. 1992); [People v. Bailey](#), 13 N.Y.3d 67, 886 N.Y.S.2d 666, 915 N.E.2d 611 (2009) (intent and knowledge); [Oldham v. State](#), 5 S.W.3d 840 (Tex. App. Houston 14th Dist. 1999), petition for discretionary review refused, (Feb. 16, 2000); [State v. Barnhart](#), 127 W. Va. 545, 33 S.E.2d 857 (1945) (intent to defraud must be proven beyond a reasonable doubt); [State v. Perry](#), 215 Wis. 2d 696, 573 N.W.2d 876 (Ct. App. 1997).

² [State v. Morgan](#), 182 Neb. 639, 156 N.W.2d 799 (1968).

³ [State v. Barnhart](#), 127 W. Va. 545, 33 S.E.2d 857 (1945).

⁴ Jones v. State, 245 A.2d 161 (Del. 1968).

⁵ State v. Shipman, 77 N.C. App. 650, 335 S.E.2d 912 (1985).

⁶ U.S. v. Peterson, 808 F.2d 969, 22 Fed. R. Evid. Serv. 433 (2d Cir. 1987); U.S. v. Borges, 620 F. Supp. 1486 (W.D. Tex. 1985); Wutzke v. Bill Reid Painting Service, Inc., 151 Cal. App. 3d 36, 198 Cal. Rptr. 418 (3d Dist. 1984); State v. Mason, 79 Haw. 175, 900 P.2d 172 (Ct. App. 1995); People v. Piening, 99 A.D.2d 583, 471 N.Y.S.2d 692 (3d Dep't 1984); State v. Shipman, 77 N.C. App. 650, 335 S.E.2d 912 (1985); Sales v. State, 628 S.W.2d 796 (Tex. Crim. App. 1982); State v. Collins, 597 P.2d 1317 (Utah 1979).

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E. Evidence

2. Admissibility

§ 55. Forged instrument

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  37, 39 to 41

The forged instrument must be produced and put in evidence before evidence of the forgery will be admitted at the trial or its nonproduction from necessity justified.¹

Caution:

At least one court has reached a contrary conclusion, holding that a check bearing an allegedly forged endorsement need not be admitted into evidence.²

Only if it appears that the instrument is lost, destroyed, or in the possession of the accused may secondary evidence be given of its contents.³

A cashier's description of the contents of a forged check may be sufficient proof, relieving the prosecution of the duty of introducing the check into evidence.⁴ Where the instrument alleged to have been forged has been admitted in evidence, enlarged photographs of it may also be admitted to show its details.⁵ The instrument alleged to have been forged also may be admitted into evidence even where no samples of the defendant's handwriting are introduced for comparison with the forged document.⁶

The right to have the forged instrument introduced in evidence may be waived.⁷

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Footnotes

- ¹ People v. Wells, 380 Ill. 347, 44 N.E.2d 32, 142 A.L.R. 1262 (1942); State v. Martin, 229 Mo. 620, 129 S.W. 881 (1910); In re Creger's Estate, 1929 OK 42, 135 Okla. 77, 274 P. 30, 62 A.L.R. 690 (1929).
- ² State v. Nicholson, 78 N.C. App. 398, 337 S.E.2d 654 (1985).
- ³ State v. Martin, 229 Mo. 620, 129 S.W. 881 (1910); State v. Peterson, 129 N.C. 556, 40 S.E. 9 (1901); Holcomb v. State, 597 S.W.2d 373 (Tex. Crim. App. 1980).
- ⁴ State v. Ruffins, 109 N.M. 668, 789 P.2d 616 (1990).
- ⁵ Puckett v. Commonwealth, 200 Ky. 509, 255 S.W. 125, 34 A.L.R. 96 (1923).
- ⁶ U.S. v. Ireland, 456 F.2d 74 (10th Cir. 1972).
- ⁷ State v. Little, 201 Kan. 101, 439 P.2d 383 (1968).

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E. Evidence

2. Admissibility

§ 56. Evidence as to elements of crime

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  38 to 41

Evidence bearing on the elements of the crime is relevant and material and therefore admissible, such as—

- evidence that the signee is a fictitious person to show that the instrument is a forgery.¹
- evidence that the instrument forged could not have prejudiced the rights of anyone under any circumstances.²
- the rest of the checkbook from which the allegedly forged check was written.³
- a check found in a leased vehicle, a checkbook, carbon copies of previously written checks, and other fully and partially completed checks, together with the victim's testimony that the checks and checkbooks were stolen from his or her vehicle.⁴
- documents showing the defendant's identity and disproving his or her alibi defense.⁵
- circumstances surrounding the transfer.⁶

However, evidence that the defendant attempted to pass an instrument at the same bank at which he or she passed a forged instrument a few days later is not admissible in a prosecution for forgery where the jury is asked to infer guilt from wholly circumstantial evidence. There is no proof that the earlier instrument was forged, and the evidence is highly prejudicial to the defendant.⁷ As to other elements of the crime of forgery, a defendant's failure to ascertain whether the individual who wrote and passed checks was actually able to pay them is not relevant as to whether the defendant knew that the check was forged.⁸

In an aiding and abetting prosecution, evidence that the defendant, during the period immediately preceding the offenses charged in the indictment, received a number of other checks from codefendants, which the defendant endorsed and cashed, splitting the proceeds with the defendants, is admissible to show the relationship between the defendant and the codefendants.⁹

CUMULATIVE SUPPLEMENT

Cases:

Testimony of defendant's former employer as to damages employer suffered due to defendant's theft of employer's funds and issuance of fraudulent checks was admissible opinion testimony at defendant's sentencing and restitution hearing, as proper foundation was laid for the testimony; employer testified that she instigated two audits, for which she was present, that auditors determined that defendant generated fraudulent, unauthorized checks and cashed them, that employer obtained copies of the checks from the bank, that she obtained affidavits from every person listed as a payee on checks showing that they did not receive the money due to them, that the auditors determined the exact amount of the fraudulent checks, that she herself confirmed the amount of each check, and that auditors prepared list of fraudulent checks based on the same information. [Baghose v. State](#), 309 Ga. App. 599, 711 S.E.2d 110 (2011).

[END OF SUPPLEMENT]

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Footnotes

- ¹ [Tate v. State](#), 961 So. 2d 763 (Miss. Ct. App. 2007).
- ² [Stevenson v. Com.](#), 258 Va. 485, 522 S.E.2d 368 (1999).
- ³ [State v. Gonzalez](#), 822 P.2d 1214 (Utah Ct. App. 1991).
- ⁴ [McDonald v. State](#), 829 S.W.2d 378 (Tex. App. Texarkana 1992).
- ⁵ [State v. Young](#), 103 N.M. 313, 706 P.2d 855 (Ct. App. 1985).
- ⁶ [State v. Mitton](#), 37 Mont. 366, 96 P. 926 (1908) (admissible to show the accused's intent).
- ⁷ [State v. Rounsaville](#), 701 S.W.2d 817 (Tenn. 1985).
- ⁸ [Stallings v. Tansy](#), 28 F.3d 1018 (10th Cir. 1994).
- ⁹ [U.S. v. Fearn](#), 501 F.2d 486 (7th Cir. 1974).

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E. Evidence

2. Admissibility

§ 57. Proof of other acts of forgery or uttering

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  38 to 41

A.L.R. Library

[Admissibility, in forgery prosecution, of other acts of forgery, 34 A.L.R.2d 777](#)

Although evidence of similar acts committed by the defendant is not admissible as proof of the commission of the criminal act for which the defendant is on trial,¹ such evidence is admissible—

- as bearing on the accused's intent.²
- as bearing on the guilty knowledge with which the act charged was committed.³
- to establish identity.⁴
- to develop the *res gestae*.⁵
- to show that in committing the other offenses the accused had adopted the same plan to utter forged instruments as charged in the case on trial.⁶

There must, however, be a similarity between the crimes in order to render other acts of forgery admissible to show a common scheme or system.⁷ Where the offenses are entirely different and are in no way or manner connected with each other, and evidence of them does not tend to aid in identifying the accused, it is error to admit it.⁸ Furthermore, evidence of similar acts offered to show the defendant's intent must be limited to acts committed within a period that may naturally throw light on the intent with which the act under investigation was committed.⁹

The fact that the defendant is under indictment for the forgery of certain instruments admitted in evidence does not affect their admissibility in evidence.¹⁰ Generally, it is improper for the prosecutor to ask the defendant on cross-examination whether he or she is under indictment for other forgeries¹¹ or to extensively refer, during closing argument, to similar-acts

testimony offered solely for the purpose of impeaching the testimony of the defendant's accomplice.¹²

Generally, the fact that the accused was acquitted of another alleged forgery does not render evidence with regard thereto inadmissible since the acquittal is not in itself proof that the other forgery was not committed.¹³

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Footnotes

- ¹ McCoy v. State, 161 Ark. 658, 257 S.W. 386 (1924); State v. Murphy, 17 N.D. 48, 115 N.W. 84 (1908).
- ² U.S. v. Grimes, 620 F.2d 587, 5 Fed. R. Evid. Serv. 1266 (6th Cir. 1980); U.S. v. Hardrich, 707 F.2d 992, 12 Fed. R. Evid. Serv. 2036 (8th Cir. 1983); McClain v. State, 473 So. 2d 612 (Ala. Crim. App. 1985); Wilson v. State, 184 Ark. 119, 41 S.W.2d 764 (1931); Green v. State, 76 So. 2d 645, 49 A.L.R.2d 847 (Fla. 1954); State v. Chance, 82 Kan. 388, 108 P. 789 (1910); State v. Burch, 261 La. 3, 258 So. 2d 851 (1972); State v. Stuart, 203 Minn. 301, 281 N.W. 299 (1938); People v. Marrin, 205 N.Y. 275, 98 N.E. 474 (1912); State v. Murphy, 17 N.D. 48, 115 N.W. 84 (1908); Vanderpool v. State, 1972 OK CR 246, 501 P.2d 871 (Okla. Crim. App. 1972); Robledo v. State, 480 S.W.2d 401 (Tex. Crim. App. 1972); State v. Green, 89 Utah 437, 57 P.2d 750 (1936).
- ³ Wilson v. State, 184 Ark. 119, 41 S.W.2d 764 (1931); Pittman v. State, 51 Fla. 94, 41 So. 385 (1906); State v. Burch, 261 La. 3, 258 So. 2d 851 (1972); State v. Aubut, 261 A.2d 48 (Me. 1970); State v. Dennis, 622 S.W.2d 404 (Mo. Ct. App. S.D. 1981); People v. Marrin, 205 N.Y. 275, 98 N.E. 474 (1912); Pelton v. State, 60 Tex. Crim. 412, 132 S.W. 480 (1909).
- ⁴ U.S. v. Hardrich, 707 F.2d 992, 12 Fed. R. Evid. Serv. 2036 (8th Cir. 1983); State v. Bock, 229 Minn. 449, 39 N.W.2d 887 (1949); Vanderpool v. State, 1972 OK CR 246, 501 P.2d 871 (Okla. Crim. App. 1972); McGee v. State, 112 Tex. Crim. 385, 16 S.W.2d 1096 (1928).
- ⁵ Ellis v. State, 255 So. 2d 325 (Miss. 1971); State v. Phillips, 127 Mont. 381, 264 P.2d 1009 (1953); Boyer v. State, 68 Okla. Crim. 220, 97 P.2d 779 (1939); Albrecht v. State, 486 S.W.2d 97 (Tex. Crim. App. 1972).
- ⁶ Wilson v. State, 184 Ark. 119, 41 S.W.2d 764 (1931); Fry v. State, 165 Ind. App. 1, 330 N.E.2d 367 (1975); Jones v. Com., 303 Ky. 666, 198 S.W.2d 969 (1947); State v. Burch, 261 La. 3, 258 So. 2d 851 (1972); State v. Hawn, 289 Minn. 18, 182 N.W.2d 712 (1970); Malley v. State, 271 So. 2d 448 (Miss. 1973); Vanderpool v. State, 1972 OK CR 246, 501 P.2d 871 (Okla. Crim. App. 1972); Bullock v. Com., 205 Va. 558, 138 S.E.2d 261 (1964); State v. Johnson, 56 Wash. 2d 700, 355 P.2d 13 (1960).
- ⁷ Thomas v. State, 223 So. 2d 391 (Fla. Dist. Ct. App. 1st Dist. 1969); Fry v. State, 165 Ind. App. 1, 330 N.E.2d 367 (1975); Jones v. Com., 303 Ky. 666, 198 S.W.2d 969 (1947).
- ⁸ Jones v. Com., 303 Ky. 666, 198 S.W.2d 969 (1947).
- ⁹ Lott v. State, 1971 OK CR 496, 491 P.2d 337 (Okla. Crim. App. 1971).
- ¹⁰ McCoy v. State, 161 Ark. 658, 257 S.W. 386 (1924); Boyer v. State, 68 Okla. Crim. 220, 97 P.2d 779 (1939).
- ¹¹ Saucier v. State, 102 Miss. 647, 59 So. 858 (1912).
- ¹² People v. Haines, 105 Mich. App. 213, 306 N.W.2d 455 (1981).
- ¹³ People v. Lewis, 105 Cal. App. 2d 208, 233 P.2d 30 (1st Dist. 1951).

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IV. Prosecutions

E. Evidence

2. Admissibility

§ 58. Comparisons of writing

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West's Key Number Digest

West's Key Number Digest, [Forgery](#)  38 to 41

Although it has been held that documents bearing the signature of the alleged forger that are not part of the record in the case or admitted in evidence for other purposes are not admissible for the sole purpose of making a comparison of signatures,¹ such signatures as are proved or conceded to be genuine and such as were executed before there was any motive to fabricate or disguise the handwriting are generally admissible for comparison with the instrument alleged to have been forged.² If such a sample is used, the prosecution must establish the chain of possession of the sample.³ It is not permissible to allow a prosecuting witness whose signature is alleged to be forged, and who denies such signature, to make his or her signature before the jury for the purpose of its being used as evidence bearing on the issue of whether the signature to the allegedly forged instrument is the witness's genuine signature.⁴ A handwriting expert's testimony to a reasonable degree of certainty that the same person wrote all of the allegedly forged checks is admissible in a forgery prosecution for the limited purpose of proving the forger's identity⁵ or linking the defendant to the corpus delicti.⁶ As long as the proper predicate is laid for the introduction of a handwriting sample, the source from which it is derived is immaterial.⁷

Observation:

An order to give a handwriting sample before trial on charges of uttering a forged document does not violate the defendant's constitutional rights.⁸

A proved specimen of typewriting may be admitted in evidence for the purpose of comparison with a disputed specimen.⁹

Thus, paper containing typed print made from a typewriter found in the defendant's car and several other typewriters is admissible to show that the typewriter found in the defendant's car could have been used to type a forged check.¹⁰

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Footnotes

- ¹ [People v. Parker](#), 67 Mich. 222, 34 N.W. 720 (1887).
- ² [Banks v. U. S.](#), 359 A.2d 8 (D.C. 1976); [State v. Fraley](#), 499 So. 2d 1304 (La. Ct. App. 4th Cir. 1986), writ granted in part, denied in part, 512 So. 2d 856 (La. 1987); [State v. Chance](#), 778 S.W.2d 457 (Tenn. Crim. App. 1989); [Ames v. State](#), 499 S.W.2d 110 (Tex. Crim. App. 1973).
- ³ [Wincor v. State](#), 212 So. 2d 42 (Fla. Dist. Ct. App. 3d Dist. 1968).
- ⁴ [State v. Jones](#), 81 Utah 503, 20 P.2d 614 (1933).
- ⁵ [People v. Tidwell](#), 706 P.2d 438 (Colo. App. 1985).
- ⁶ [Fry v. State](#), 165 Ind. App. 1, 330 N.E.2d 367 (1975).
- ⁷ [Cadd v. State](#), 587 S.W.2d 736 (Tex. Crim. App. 1979).
- ⁸ [Lacey v. State](#), 239 So. 2d 628 (Fla. Dist. Ct. App. 2d Dist. 1970).
- ⁹ [People v. Storrs](#), 207 N.Y. 147, 100 N.E. 730 (1912).
- ¹⁰ [State v. Borning](#), 477 So. 2d 134 (La. Ct. App. 1st Cir. 1985), writ denied, 481 So. 2d 1330 (La. 1986).

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IV. Prosecutions

E. Evidence

2. Admissibility

§ 59. Expert and opinion evidence

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West's Key Number Digest

West's Key Number Digest, [Forgery](#)  37

A.L.R. Library

[Propriety of jury, or court sitting as trier of facts, making a comparison of a disputed writing with a standard produced in court, without the aid of an expert witness, 80 A.L.R.2d 272](#)

Trial Strategy

[Alteration of Instruments, 29 Am. Jur. Proof of Facts 3d 549](#) § 18 (testimony of document examiner)

[The Effects of Alterations to Documents, 29 Am. Jur. Proof of Facts 3d 549](#) §§ 18 to 30 (proving fact of alteration by testimony of expert examiner of questioned documents)

[Identification of Handprinting and Numerals, 24 Am. Jur. Proof of Facts 3d 667](#) §§ 34 to 37 (proving lay witness not qualified to authenticate)

In a prosecution for forgery, a witness who has obtained knowledge of one's handwriting by seeing that person write may testify as to whether another paper, word, or name is in the same handwriting.¹ Persons skilled in a knowledge of handwriting may also give their opinions as to whether the particular handwriting on the allegedly forged instrument is genuine although they never observed the party whose name appears to be signed actually writing.² Such expert testimony may be sufficient to sustain a defendant's conviction for violating a forgery statute.³

It is not a violation of the defendant's constitutional rights for an expert to base his or her testimony on a fingerprint card the defendant signed following arrest.⁴ The government is not required to produce prior to trial the handwriting expert's report linking the defendant's handwriting with the endorsement on a forged check with which he or she was charged with having possession where that evidence would not be exculpatory.⁵

In some jurisdictions, the jurors in a prosecution for forgery may compare the handwritings introduced in evidence and exercise their own judgment concerning the genuineness of the endorsements.⁶ However, the rule elsewhere is that the comparison of handwriting is an art that can be judicially practiced only by expert or skilled witnesses, and to allow a jury to assume the role of expert or skilled practitioners in the field of handwriting, with no guide or format on which to base a considered opinion, is to place on them responsibility that transcends the experience and common knowledge of the average jury member.⁷

Expert testimony may be used to show that an instrument has been altered through the addition of a number.⁸

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Footnotes

- ¹ [Spencer v. State, 237 Ind. 622, 147 N.E.2d 581, 72 A.L.R.2d 304 \(1958\).](#)
As to witnesses familiar with the handwriting of the alleged writer, see [Am. Jur. 2d, Expert and Opinion Evidence §§ 131, 132.](#)
- ² [People v. Tidwell, 706 P.2d 438 \(Colo. App. 1985\); Clark v. State, 114 So. 2d 197, 80 A.L.R.2d 261 \(Fla. Dist. Ct. App. 1st Dist. 1959\); Spencer v. State, 237 Ind. 622, 147 N.E.2d 581, 72 A.L.R.2d 304 \(1958\); State v. Meeks, 245 Iowa 1231, 65 N.W.2d 76 \(1954\); People v. Yu, 166 A.D.2d 249, 564 N.Y.S.2d 300 \(1st Dep't 1990\); May v. State, 14 Ohio 461, 1846 WL 51 \(1846\).](#)
- ³ [U.S. v. Lee, 485 F.2d 41 \(4th Cir. 1973\); Hudson v. State, 188 Ga. App. 684, 374 S.E.2d 212 \(1988\); State v. Sherman, 761 So. 2d 660 \(La. Ct. App. 4th Cir. 2000\).](#)
- ⁴ [Wincor v. State, 212 So. 2d 42 \(Fla. Dist. Ct. App. 3d Dist. 1968\).](#)
- ⁵ [U.S. v. Phillips, 585 F.2d 745 \(5th Cir. 1978\).](#)
- ⁶ [State v. Maxwell, 151 Kan. 951, 102 P.2d 109, 128 A.L.R. 1315 \(1940\); State v. Haislip, 77 Wash. 2d 838, 467 P.2d 284 \(1970\).](#)
- ⁷ [Clark v. State, 114 So. 2d 197, 80 A.L.R.2d 261 \(Fla. Dist. Ct. App. 1st Dist. 1959\).](#)
- ⁸ [Allen v. State, 555 So. 2d 1185 \(Ala. Crim. App. 1989\).](#)

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3. Weight and Sufficiency

§ 60. Forgery, generally

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West's Key Number Digest

West's Key Number Digest, [Forgery](#)  44(.5) to 44(2)

Forgery, and each individual element thereof, may be proven by either direct or circumstantial evidence.¹ Although the weight and sufficiency required of the evidence needed to sustain a conviction varies according to the circumstances of each case, in some jurisdictions, circumstantial evidence is sufficient to sustain a conviction where the defendant was in possession of a forged or altered instrument.² In other jurisdictions, however, evidence of mere possession is insufficient in the absence of evidence that the accused actually unlawfully altered or forged the document or knew that the instrument was forged.³ Circumstantial evidence also is sufficient to establish the intent to defraud or harm necessary to a conviction for forgery⁴ but if the circumstances would not allow a reasonable trier of fact to infer that the possessor of forged instruments entertained the requisite intent to defraud, the evidence is insufficient to sustain a conviction.⁵ Circumstantial evidence can also be used to establish a defendant's knowledge that an instrument is forged.⁶ However, when the prosecution relies entirely on circumstantial evidence to establish a defendant's knowledge that an instrument was forged, the defendant's reasonable hypothesis of innocence that he or she lacked knowledge that the instrument was forged requires the entry of a judgment of acquittal unless the prosecution has presented competent evidence inconsistent with the defendant's theory of events.⁷

The authenticity of allegedly forged documents can be established by circumstantial evidence⁸ as can the identity of the defendant.⁹

CUMULATIVE SUPPLEMENT

Cases:

Evidence was sufficient to support conviction for second-degree forgery; evidence showed that all four of the loose checks in the name of identity fraud victims were found under the driver's seat of the vehicle which defendant was driving when he and

his codefendants attempted to flee the electronics store after they presented a similar fraudulent check in an attempt to purchase a tablet, thus showing that defendant possessed the checks, jointly, if not solely, with the requisite intent to defraud. O.C.G.A. § 16-9-2(a) (2011). *Smith v. State*, 745 S.E.2d 683 (Ga. Ct. App. 2013).

Evidence established that defendant knowingly possessed counterfeit money, as required to support his conviction for criminal possession of forged instrument in first degree; defendant kept counterfeit bills in bundle that was separate from genuine money, material from which counterfeit bills were made and their appearance were noticeably different from genuine currency, and defendant's statement to police that he would give up who he got currency from if drug charges went away could be interpreted as acknowledging that he knew the bills were counterfeit. *N.Y. Penal Law* § 170.30. *People v. Britt*, 160 A.D.3d 428, 74 N.Y.S.3d 207 (1st Dep't 2018).

Sufficient evidence established that defendant had knowledge that five checks were forged instruments, as required to support his conviction on five counts of criminal possession of forged instrument; evidence showed that checks were both written to and endorsed by defendant, prosecutor offered photographic evidence of defendant at teller counter when four of those checks were cashed, account holder testified that several checks had been taken from her home and that she had not written any checks to defendant, whom she did not know, and evidence showed that defendant cashed two different checks at separate branches of same bank, within one hour. *McKinney's Penal Law* § 170.25. *People v. Hold*, 101 A.D.3d 1692, 956 N.Y.S.2d 769 (4th Dep't 2012).

[END OF SUPPLEMENT]

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Footnotes

- ¹ *Nelson v. State*, 302 Ga. App. 583, 691 S.E.2d 363 (2010); *State v. Mason*, 79 Haw. 175, 900 P.2d 172 (Ct. App. 1995); *People v. Kunce*, 196 Ill. App. 3d 388, 143 Ill. Dec. 92, 553 N.E.2d 799 (3d Dist. 1990); *State v. Nelson*, 895 S.W.2d 289 (Mo. Ct. App. E.D. 1995).
- ² *Arnold v. State*, 340 So. 2d 873 (Ala. Crim. App. 1976); *Brown v. State*, 426 So. 2d 76 (Fla. Dist. Ct. App. 1st Dist. 1983) (disapproved of on other grounds by, *Bundy v. State*, 471 So. 2d 9 (Fla. 1985)); *Johnson v. State*, 211 Ga. App. 151, 438 S.E.2d 657 (1993); *Rowland v. State*, 531 So. 2d 627 (Miss. 1988); *People v. Moore*, 41 A.D.3d 1202, 837 N.Y.S.2d 484 (4th Dep't 2007); *People v. Ramos*, 259 A.D.2d 505, 686 N.Y.S.2d 67 (2d Dep't 1999); *State v. Prince*, 49 N.C. App. 145, 270 S.E.2d 521 (1980); *State v. Scoby*, 117 Wash. 2d 55, 810 P.2d 1358 (1991), opinion amended on other grounds, 117 Wash. 2d 55, 815 P.2d 1362 (1991).
- ³ *State v. McIntosh*, 542 S.W.2d 363 (Mo. Ct. App. 1976); *People v. Ramos*, 259 A.D.2d 505, 686 N.Y.S.2d 67 (2d Dep't 1999); *Taylor v. State*, 626 S.W.2d 543 (Tex. App. Texarkana 1981), petition for discretionary review refused, (Mar. 10, 1982).
- ⁴ *State v. Dickman*, 119 Conn. App. 581, 989 A.2d 613 (2010), certification denied, 295 Conn. 923, 991 A.2d 569 (2010); *Taylor v. State*, 293 Ga. App. 551, 667 S.E.2d 405 (2008), cert. denied, (Jan. 26, 2009); *Eifler v. State*, 570 N.E.2d 70 (Ind. Ct. App. 1991); *State v. McKenna*, 1998 ME 49, 707 A.2d 1309 (Me. 1998); *People v. Rodriguez*, 71 A.D.3d 450, 897 N.Y.S.2d 42 (1st Dep't 2010), leave to appeal granted, 15 N.Y.3d 777, 933 N.E.2d 1059 (2010); *State v. Sanders*, 95 N.C. App. 494, 383 S.E.2d 409 (1989); *State v. Lee-Grigg*, 374 S.C. 388, 649 S.E.2d 41 (Ct. App. 2007), cert. granted, (Sept. 18, 2008) and decision aff'd, 387 S.C. 310, 692 S.E.2d 895 (2010); *Shipp v. State*, 292 S.W.3d 262 (Tex. App. Texarkana 2009); *Reid v. Com.*, 16 Va. App. 468, 431 S.E.2d 63 (1993).
- ⁵ *People v. Miralda*, 981 P.2d 676 (Colo. App. 1999).
- ⁶ *Ginn v. State*, 26 So. 3d 706 (Fla. Dist. Ct. App. 2d Dist. 2010).
State v. Stallings, 158 S.W.3d 310 (Mo. Ct. App. W.D. 2005).
- ⁷ *Ginn v. State*, 26 So. 3d 706 (Fla. Dist. Ct. App. 2d Dist. 2010).
- ⁸ *In re Slaughter*, 929 A.2d 433 (D.C. 2007).

⁹ [People v. Gibbs, 44 A.D.3d 417, 843 N.Y.S.2d 258 \(1st Dep't 2007\).](#)

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E. Evidence

3. Weight and Sufficiency

§ 61. Uttering, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Forgery](#)  44(3)

Evidence sufficient to sustain a conviction for uttering a false or forged instrument includes—

- proof that the defendant gave a forged check to a store clerk in payment for goods.¹
- evidence that the defendant signed a friend's name on checks without having been given permission to do so.²
- proof that a person attempted to cash a stolen check using the defendant's name and state identification card.³
- a doubtful explanation of the circumstances surrounding the defendant's receipt of allegedly forged checks.⁴
- possession of a forged check on which the defendant was named as payee, together with the defendant's presentation of the check for payment.⁵
- the defendant's conflicting stories and lies about the checks' origins.⁶

CUMULATIVE SUPPLEMENT

Cases:

Sufficient evidence supported defendant's conviction for forgery for uttering a forged writing, arising from defendant cashing company's payroll check, despite contention that evidence did not answer questions of how defendant received check and what defendant knew of company; evidence included that check was made payable to defendant and included his address, that check was purportedly company's payroll check, that defendant never worked for company and had no relationship with company, and that defendant told police that with regard to cashed check he only did it once, and how defendant came into possession of check and what he knew of company was immaterial since circumstantial evidence and reasonable inferences established defendant knew that he would not be payee on a genuine company check. [18 Pa. Cons. Stat. Ann. § 4101\(a\)\(3\)](#). [Commonwealth v. Green, 2019 PA Super 17, 203 A.3d 250 \(2019\)](#).

[END OF SUPPLEMENT]

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Footnotes

- ¹ Arnold v. State, 739 So. 2d 422 (Miss. Ct. App. 1999); Dillard v. Com., 32 Va. App. 515, 529 S.E.2d 325 (2000).
- ² Blackwell v. State, 744 So. 2d 359 (Miss. Ct. App. 1999).
- ³ Redmond v. State, 731 So. 2d 77 (Fla. Dist. Ct. App. 2d Dist. 1999).
- ⁴ State v. McGuire, 572 N.W.2d 545 (Iowa 1997).
- ⁵ Walker v. Com., 25 Va. App. 50, 486 S.E.2d 126 (1997).
- ⁶ State v. Sanders, 95 N.C. App. 494, 383 S.E.2d 409 (1989).

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Research References

West's Key Number Digest

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A.L.R. Index, Forgery

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Trial Strategy

[Liability for Sale of Forged Antique or Work of Art, 50 Am. Jur. Proof of Facts 3d 371](#)

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36 Am. Jur. 2d Forgery § 62

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F. Trial

§ 62. Generally; instructions

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West's Key Number Digest

West's Key Number Digest, [Forgery](#)  48

Trial Strategy

[Liability for Sale of Forged Antique or Work of Art, 50 Am. Jur. Proof of Facts 3d 371 § 51](#) (model jury instructions)

Instructions in prosecutions for forgery must relate and be confined to the issues raised by the pleadings and evidence.¹ Matter in a requested instruction that is inapplicable to a prosecution for forgery may be stricken.² An instruction containing a definition of forgery either in the language of the statute or through reciting the elements of the offense is not error although parts of it may be superfluous.³ It is not necessary for the court to instruct on circumstantial evidence where the proof of the inculpatory fact is direct and positive.⁴ An instruction substantially similar to a uniform jury instruction is proper even where the defendant's alternative instruction may have more accurately informed the jury.⁵

Specific instructions may be required on the individual elements of forgery.⁶ An instruction stating that the jury could convict the defendant only if it found that the defendant intended to defraud or harm some person by the means alleged is generally required.⁷ An intent-to-defraud instruction can broadly define "defraud,"⁸ and a jury can be instructed that intent may be inferred from the circumstances.⁹ However, an instruction that the defendant displayed the forged document to someone while representing that it was genuine is not usually required¹⁰ nor is an instruction that the defendant received money or other monetary gain.¹¹

A failure to instruct the jury on a claim of right defense is not reversible error where the defendant does not produce any specific evidence relating to that defense.¹²

Footnotes

- ¹ U.S. v. Windom, 510 F.2d 989 (5th Cir. 1975); State v. Mitton, 37 Mont. 366, 96 P. 926 (1908).
- ² Snow v. State, 85 Ark. 203, 107 S.W. 980 (1908).
- ³ U.S. v. Stulga, 584 F.2d 142 (6th Cir. 1978).
- ⁴ Wolf v. State, 53 S.W. 108 (Tex. Crim. App. 1899).
- ⁵ State v. Bolinger, 460 N.W.2d 877 (Iowa Ct. App. 1990).
- ⁶ U.S. v. Stone, 987 F.2d 469 (7th Cir. 1993); Reid v. Warden, Cent. Prison, Raleigh, N.C., 702 F. Supp. 1240 (W.D. N.C. 1989), republished at 708 F.Supp. 730; People v. Turner, 179 Ill. App. 3d 510, 128 Ill. Dec. 159, 534 N.E.2d 179 (2d Dist. 1989); State v. Prince, 49 N.C. App. 145, 270 S.E.2d 521 (1980); State v. Rhodes, 2004-Ohio-6659, 2004 WL 2849217 (Ohio Ct. App. 12th Dist. Butler County 2004); State v. Knoche, 515 N.W.2d 834 (S.D. 1994); Cline v. State, 685 S.W.2d 760 (Tex. App. Houston 1st Dist. 1985).
- ⁷ Snowden v. State, 784 S.W.2d 559 (Tex. App. Fort Worth 1990), petition for discretionary review refused, (May 2, 1990).
- ⁸ State v. Thompson, 194 Ariz. 295, 981 P.2d 595, 108 A.L.R.5th 859 (Ct. App. Div. 1 1999); People v. Gaul-Alexander, 32 Cal. App. 4th 735, 38 Cal. Rptr. 2d 176 (5th Dist. 1995).
- ⁹ U.S. v. White, 611 F.2d 531, 5 Fed. R. Evid. Serv. 896 (5th Cir. 1980).
- ¹⁰ Short v. U.S., 676 A.2d 910 (D.C. 1996).
- ¹¹ Calvert v. State, 498 N.E.2d 105 (Ind. Ct. App. 1986).
- ¹² People v. Freeman, 149 Mich. App. 119, 385 N.W.2d 617 (1985).

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36 Am. Jur. 2d Forgery § 63

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F. Trial

§ 63. Questions of fact and law

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West's Key Number Digest

West's Key Number Digest, [Forgery](#)  47

The ultimate question of a defendant's guilt in a trial for forgery is one for the trier of fact.¹ Individual elements of the offense may, however, be matters of law to be decided by the judge; for example, whether a forged document purports to have legal efficacy is a matter of law in some jurisdictions,² although not in others, where it is considered a jury question.³ Other questions for the jury include—

- questions relating to the credibility of the defendant and other witnesses.⁴
- questions relating to the defendant's intent.⁵
- whether the person whose name was signed on the document was real or fictional.⁶
- whether there was sufficient evidence related to venue.⁷
- whether the instrument was so imperfect as not to deceive a person of ordinary prudence.⁸

Whether there is a variance between the instrument set forth in the indictment and that produced at trial is, in case of ambiguity in the writing, a question of fact for the jury, and its verdict is conclusive.⁹

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Footnotes

¹ [Maloney v. State](#), 91 Ark. 485, 121 S.W. 728 (1909).

² [State v. Sandoval](#), 142 N.M. 412, 2007-NMCA-103, 166 P.3d 473 (Ct. App. 2007).

³ [People v. Mattingly](#), 180 Ill. App. 3d 573, 129 Ill. Dec. 573, 536 N.E.2d 257 (4th Dist. 1989).

⁴ [State v. Morales](#), 129 N.M. 141, 2000-NMCA-046, 2 P.3d 878 (Ct. App. 2000); [People v. Sheikh](#), 245 A.D.2d 811, 666 N.Y.S.2d 314 (3d Dep't 1997); [Oldham v. State](#), 5 S.W.3d 840 (Tex. App. Houston 14th Dist. 1999), petition for discretionary review refused, (Feb. 16, 2000).

⁵ [State v. Weigel](#), 194 N.J. Super. 451, 477 A.2d 372 (App. Div. 1984); [State v. Phalen](#), 192 W. Va. 267, 452 S.E.2d 70

(1994).

⁶ Maloney v. State, 91 Ark. 485, 121 S.W. 728 (1909); State v. Wescott, 316 S.C. 473, 450 S.E.2d 598 (Ct. App. 1994).

⁷ Steed v. State, 752 So. 2d 1056 (Miss. Ct. App. 1999).

⁸ State v. Chance, 82 Kan. 388, 108 P. 789 (1910).

⁹ Bullard v. State, 40 Ala. App. 641, 120 So. 2d 580 (1960).

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Trial Strategy

[The Effects of Alterations to Documents](#), 29 Am. Jur. Proof of Facts 3d 549§ 17 (elements of proof checklist)

The testimony of coconspirators and accomplices is admissible in accordance with the general rules governing such evidence.¹

Generally, the testimony of the person whose name is alleged to have been forged is admissible to prove that the name appearing on the instrument is not his or her genuine signature,² although it has been held that a person whose name appears upon forged paper and who is interested in setting the instrument aside cannot give evidence to prove the forgery, although such person is deemed competent to prove all collateral matters.³ This rule does not extend, however, to cases where the witness has no real interest in the conviction, as where he or she is the cashier or other agent of a bank, the note of which has been forged.⁴

Eyewitness testimony is admissible to identify the defendant as one who passed or attempted to pass a forged instrument.⁵

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Footnotes

¹ [Robinson v. State](#), 35 Tex. Crim. 54, 43 S.W. 526 (1895).
As to accomplices as witnesses, see [Am. Jur. 2d, Witnesses § 270](#).
As to coindictes as witnesses, see [Am. Jur. 2d, Witnesses § 271](#).

² Hess v. State, 5 Ohio 5, 1831 WL 38 (1831); State v. Phelps, 11 Vt. 116, 1839 WL 1362 (1839).

³ U.S. v. Murphy, 41 U.S. 203, 10 L. Ed. 937, 1842 WL 5758 (1842).

⁴ Hess v. State, 5 Ohio 5, 1831 WL 38 (1831).

⁵ U. S. v. Dobson, 512 F.2d 615 (6th Cir. 1975); State v. Roberts, 547 S.W.2d 500 (Mo. Ct. App. 1977).

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G. Witnesses

§ 65. Defendant as witness

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The defendant in a prosecution for forgery may choose to become a witness, but the defendant cannot be compelled or required to testify, and his or her declination to do so must not be considered by the court or jury to the defendant's prejudice.¹ By choosing to become a witness, a defendant waives the constitutional privilege of refusing to furnish evidence against himself or herself and may be interrogated as a general witness in the cause.² A defendant who takes the stand may be contradicted and impeached as any other witness.³

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Footnotes

- ¹ [Fletcher v. State](#), 49 Ind. 124, 1874 WL 5931 (1874); [People v. Brown](#), 72 N.Y. 571, 1878 WL 12522 (1878).
As to the nonprejudicial effect of the defendant's refusal to testify in criminal actions, generally, see [Am. Jur. 2d, Witnesses](#) § 119.
- ² [People v. Dole](#), 122 Cal. 486, 55 P. 581 (1898).
As to the extent of waiver of the constitutional privilege against self-incrimination, see [Am. Jur. 2d, Criminal Law](#) § 1048.
- ³ [Fletcher v. State](#), 49 Ind. 124, 1874 WL 5931 (1874).

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H. Sentence and Punishment

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The statutory punishment may be imposed only for the statutory offense.¹ A sentence within the statutory maximum is not excessive in many jurisdictions even where it may not seem to be proportionate to the offense.² Nevertheless, a sentence may still be found to be too lenient³ or too excessive.⁴ Where the defendant is convicted of more than one offense, the court may, in its discretion, order the defendant to serve concurrent⁵ or consecutive⁶ prison terms.

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Footnotes

¹ [Douglas v. State](#), 661 So. 2d 853 (Fla. Dist. Ct. App. 5th Dist. 1995).

² [U.S. v. Lowe](#), 482 F.2d 1357 (6th Cir. 1973); [Williams v. State](#), 456 So. 2d 852 (Ala. Crim. App. 1984); [Wesolic v. State](#), 837 P.2d 130 (Alaska Ct. App. 1992); [People v. Hughes](#), 112 Cal. App. 3d 452, 169 Cal. Rptr. 364 (1st Dist. 1980); [State v. Hamilton](#), 129 Idaho 938, 935 P.2d 201 (Ct. App. 1997); [Mayberry v. State](#), 605 N.E.2d 244 (Ind. Ct. App. 1992); [State v. Gant](#), 687 So. 2d 660 (La. Ct. App. 2d Cir. 1997), writ denied, 696 So. 2d 1006 (La. 1997); [State v. Harstad](#), 397 N.W.2d 419 (Minn. Ct. App. 1986); [Davis v. State](#), 758 So. 2d 463 (Miss. Ct. App. 2000); [State v. Coleman](#), 241 Neb. 731, 490 N.W.2d 222 (1992); [People v. Upson](#), 251 A.D.2d 818, 674 N.Y.S.2d 808 (3d Dep't 1998); [Middaugh v. State](#), 1988 OK CR 295, 767 P.2d 432 (Okla. Crim. App. 1988); [Com. v. Muller](#), 334 Pa. Super. 228, 482 A.2d 1307 (1984); [State v. Calvert](#), 79 Wash. App. 569, 903 P.2d 1003 (Div. 3 1995).

³ [State v. Cotton](#), 2 Neb. App. 901, 519 N.W.2d 1 (1994).

⁴ [Mathison v. State](#), 687 P.2d 930 (Alaska Ct. App. 1984); [Driver v. U.S.](#), 521 A.2d 254 (D.C. 1987); [Roache v. State](#), 547 So. 2d 706 (Fla. Dist. Ct. App. 1st Dist. 1989); [State v. Joslin](#), 120 Idaho 462, 816 P.2d 1019 (Ct. App. 1991); [State v. Fields](#), 423 N.W.2d 390 (Minn. 1988); [Goodrum v. State](#), 700 S.W.2d 630 (Tex. App. Houston 14th Dist. 1985), petition for discretionary review refused, (Mar. 11, 1987).

⁵ [Russell v. State](#), 458 So. 2d 422 (Fla. Dist. Ct. App. 2d Dist. 1984), decision approved, 472 So. 2d 466 (Fla. 1985);

State v. Ricks, 120 Idaho 875, 820 P.2d 1232 (Ct. App. 1991); Ferrell v. State, 565 N.E.2d 1070 (Ind. 1991); State v. Pegues, 641 So. 2d 1080 (La. Ct. App. 2d Cir. 1994); People v. Kaczorowski, 190 Mich. App. 165, 475 N.W.2d 861 (1991); People v. Bombard, 270 A.D.2d 648, 705 N.Y.S.2d 415 (3d Dep't 2000); State v. Smith, 926 S.W.2d 267 (Tenn. Crim. App. 1995).

⁶ State v. Hoggard, 654 So. 2d 405 (La. Ct. App. 2d Cir. 1995).

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§ 67. Separate punishments for forging and uttering of same instrument

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Where the making and the uttering of a forgery, when committed as a continuous transaction, are considered to be but different parts of the same crime rather than distinct crimes,¹ the sentence based on a general verdict or plea of guilty must impose only one penalty, and a separate sentence for each count, where they are set out separately, is erroneous and void.² However, many cases treat the forging and uttering of the same writing as distinct offenses and allow not only the prosecution of each jointly but also a separate and distinct conviction and punishment for each.³

CUMULATIVE SUPPLEMENT

Cases:

Statute governing criminal offense of taking a bear with the aid of bait does not create a “separate offense” for each and every type of bait listed in the relevant statutory language; instead, a single wrong may be established by a finding of various alternative elements, since the crime of taking a bear with the use or aid of bait is a single offense which may be proved by evidence of the commission of any one of a number of acts. West’s [N.C.G.S.A. §§ 113–291.1\(b\)\(2\)](#). [State v. Ballance](#), 720 S.E.2d 856 (N.C. Ct. App. 2012).

[END OF SUPPLEMENT]

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Footnotes

¹ § 24.

² U.S. v. Carpenter, 151 F. 214 (C.C.A. 9th Cir. 1907).

³ Bronstein v. State, 355 So. 2d 817 (Fla. Dist. Ct. App. 3d Dist. 1978); Bateman v. Com., 205 Va. 595, 139 S.E.2d 102 (1964).

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